

Supreme Court U.S.  
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IN THE  
SUPREME COURT OF THE UNITED STATES

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Christopher Lawrence - *Pro Se* Petitioner

V.

WESTINGHOUSE SAVANNAH RIVER  
COMPANY LLC - Respondent

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On Petition For Write of Certiorari To  
The UNITED STATES COURT OF APPEALS  
FOR THE FOURTH DISTRICT

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PETITION FOR WRIT OF CERTIORARI

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Christopher Lawrence  
*Pro Se*

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## QUESTIONS PRESENTED

*The present case encompasses both racial profiling and biasing of black litigants.* The *Pro se* in this case being African American, who's substantive rights have been abridged by summary manner to which the Magistrate, and District Judges, and Appeals Court did not treat the material of facts and evidence presented in a fair and just manner. Respectfully, questions presented to the Supreme Court are:

1. Has the Appeals Court violated laws which govern or oversee racial bias due to the *Pro se* Petitioner being an African American?
2. Does the constitution guarantee a fair trial when the issue involves a common law controversy?
3. Did the respondent's counsel Summary Motion contain blatant errors which were ignored by the presiding Judge?
4. Where is it specifically documented that the material facts from the June and July 5, 2005 pleadings presented by the Petitioner, were reviewed appropriately?
5. Did the respondent counsel unlawfully change an established court document identified as "Statement of Uncontested Facts?"
6. Did the Petitioner consistently present evidence supported by the WSRC Employees Handbook contradicting the attendance issue?
7. How did the Respondent, Magistrate, District judge, and Appeals Court classify the Petitioner's absences which were excused, granted, or approved?
8. Was the Petitioner's at will status altered in any way based on the provisions of the 5B employee handbook, or the DOE contract?



9. Was there an established unilateral contract between the employee and employer? If so, was the employee a third party beneficiary of this same contract?

10. Was the basis for the Appeals Court's unpublished opinion, determined by the Petitioner being a minority Pro se litigant?

11. On June 14, 2004, did the Magistrate contradict his own order and instructions to the Court?

12. Did the Magistrate violate the 14<sup>th</sup> Amendment of Procedural Due Process?

13. Did the Magistrate include the altered Statement of Uncontested fact in his Report and Recommendation?

14. Did the Appeals Court apply backroom jurisprudence following Chief Justice Taney's legacy in the Dred Scot case, 60 U.S. 393(1856) that "blacks have no rights which the white man is bound to respect"?

15. On June 14, 2004, did the Respondent Counsel recite to the Court any violations against the support of the 2.9 Employee handbook or DOE?

16. On June 14, 2004, did the Petitioner and Respondent Counsel under the Magistrate's order, establish material facts of the case?

17. Did the Appeals Court appropriately consider or review Ralph Thigpen's past history associated with the Petitioner's discharge and pleading referenced in the L2<sup>10</sup> notebook record?

18. Did the Magistrate inappropriately conspire with either the Defendant and/or Respondent Counsel?

19. Did the District Judge disclose untrue, unsupported statements to both the Appeals Court and Petitioner, pointing out the reason for the Petitioner's termination?

20. How can the Civil or Procedural Due Process rights of an African American Pro se litigant be protected assuring a

fair and just hearing or jury trial? 1964 Title VII Act  
U.S.C.A. §1983?

**21. Can a presiding judge act with uncensored authority, contrary to the office upheld by the law of the land, hide behind the merits of the entire judicial system? U.S.C §352 (b) (A) (ii)?**

**22. Did the Respondent violate the FMLA of 1993 by denying the petitioner the right for dependant care for son's critical health?**

All parties do not appear in the caption of the case on the cover page. There also apply questions involving the constitutionality under which 28U.S.C. §2403(a) applies. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

A.

- 1) United States District Court for the District of South Carolina Aiken Division where the magistrate's George C. Kosko presided and file a Report of Recommendation 7/19/04.
- 2) United States District Court for the District of South Carolina Aiken Division where the district judge R. Bryan Harwell granted the Respondent motion for summary 4/4/05.
- 3) United States Appeals Court for the Fourth Circuit where the Chief Judge William W. Wilkins dismissed a judicial complaint against the magistrate on 7/12/05.
- 4) United States Appeals Court for the Fourth Circuit where the Judges H. Emory Widener, Karen J. Williams, and M. Blaine Michael affirmed from an unpublished opinion per curiam on 8/23/05.
- 5) United States Appeals Court for the Fourth Circuit where the Judges H. Emory Widener, Karen J. Williams, and M. Blaine Michael denied motion of Petition for Rehearing due to grandmother's death on 9/12/05.
- 6) United States Solicitor General for the Department of Justice where the issues involve the constitutionality of discrimination, bias, racial profiling, and the 1964 Title VII Act.

- 7) United States Attorney General pursuant to issues involving the constitutionality as defined by 28 U.S.C. §451
- 8) United States Attorney General pursuant to issues violating FMLA of 1993, 29 CFR, §825.114 and §825.116 for serious health condition.
- 9) United States Attorney General pursuant to issues of violations to DOE and Westinghouse contract # DE-AC09-96SR18500, Sections C, H, I, J-App. A1, and J-App. F-1.

B.

Concerning the relevance of parent or public held company owning 10% or more of the corporation's stock is unknown and is not applicable.

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14) DOE Contract agreement with subordinates per Personnel Order 350.1.	3, 4, 12, 13, 16, 21, 24, 28

## **STATUTES AND RULES:**

Supreme Court of South Carolina modified the at will status of the state reasoning and recognizing a unilateral contract and writing of an employment handbook, policy, or certain manuals can alter the at will status of the state. In cases involving the above, South Carolina Supreme and Appeals Courts, have held the existence, interpretation and application of writings to the employment relationship are questions for a jury unless the evidence is clear and undisputed.

Decisions associated with the merits of a judicial proceeding under **28 U.S.C. §352(A) (ii)** mocks the American justice system.

**1964 Title VII Act U.S.C.A. §1983** guarantees minorities have equal substitutive rights.

**VII Amendment to Constitution of the United States** guarantees a trial when a controversy issue involves common law suit such as the at-will status of S.C. The following are in **Violation of the Fourteenth Amendment U.S.C.A. § 106.0429** regarding procedural due process considering minority material facts in the case; 1) The Magistrate, Trial and Appeals Courts, abridged the minority Petitioner's procedural rights, with biasing, allowing inappropriate conduct from the respondent counsel. 2) The Magistrate not appropriately following his own order or instructions. 3) The Trial Court improperly applying law of State in cases, which involve contract/employment issues.

The Supreme Court of South Carolina affirmed in Conner, **supra at 610**, that the province of a jury is to determine the existence and interpretation of a written agreement (handbook) in light of the facts of a particular. Preservation of a state common law status between a contract and obligation is governed by the state. Therefore, South Carolina's Appeals Court previous position affirms the right of a jury trial. Currently, the Appeals Court's stance is in default of it's previous position regarding the at will status. **Constitution**



**Law §712. Normally preservation of this position would not be disturbed unless there is an abandonment of the holdings by the Courts of that state.**

**IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to Review judgment below.

**OPINIONS BELOW**

[X] For cases from federal courts:

The opinion of the United States Court of Appeals appears at **Appendix A** to the Petition and is

[X] unpublished

The opinion of the United States Court of Appeals appears at **Appendix E** to the petition and

[X] has been designated for publication but is not yet reported.

The opinion of the United States Court of Appeals appears at **Appendix B** to the petition and is [X] has been designated for publication but is not yet reported

## **JURISDICTION**

**[X]** For cases from **federal courts**:

The date on which the United State Court of Appeals decide my case was **August 23, 2005 Appendix A.**

**[X]** A petition for rehearing was filed on **September 9, 2005** in accordance to filing time exception (2). The delay was a result of grandmother's **death on September 2, 2005.** **This information with the attached copy of the obituary was filed to show cause. The Court of Appeals denied the petition as being untimely when in fact the Notice filing time under EN BANC (2) rule allows an extension of time or leave when a litigant is pro se and death has occurred in the family to prevent a timely filing.**

**[X]** A petition for rehearing was denied by the United States Court of Appeals on the following date **September 12, 2005,** a copy of the order denying rehearing appears at **Appendix E**

**[X]** The date on which the United States District Court decided my case was **April 4, 2005,** a copy of the order granting the summary motion appears at **Appendix C**

**[X]** The date on which the United States District Court Magistrate decided my case was **July 19, 2004,** a copy of the Report and Recommendation appears at **Appendix D**

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This document presents Constitutional issues as they relate to the treatment of minority pro se's versus anglo saxon counsel and Judges. The Fourteenth Admendment of procedural due process is in dire jeopardy concerning bias in the Fourth Circuit Courts applying Backroom Jurisprudence. This as well as other issues which include; the 1964 V1 Act U.S.C.A. §1983, where the *Trial Court* and *Court of Appeals* will not consider the African American pro se material of facts which have been meticulously labored over and appropriately presented as such to only request a fair trial versus the anglo-saxon version of this case, even when the record was presented in specific detail in the minority pro se July 5, 2005 pleadings with supporting documentation in notebook exhibits.

The other issue relates to the presiding Magistrate judge over this case, involving his actions and conduct which have been grossly wrong, having allowed biased treatment towards a favored party within the judicial arena. His decisions have been protected based on U.S.C.A. §352 (A) (ii) that violates the entire judicial court system by allowing judges to rule, making detrimental decisions, knowing that the judicial power they possess often obscures the proper ruling of justice. This is noted specifically within this case and is not the intent of the founders of the United States Constitution to allow and or even offer protective shield basing any claim against the judge involved on the merits and ruling of a case. By allowing Judges and counsel special privileges in the Fourth Circuit or in the entire judicial system, who are expected to carry the justice, fairness, and equal procedural due, processes a stench of contaminated injustice.

The public requires a standard and responsibility in the judiciary system. A circumvented law of protection is allowing special privileges to not execute the office which justice arises from.

Serious policy issues are brought to light involving the DOE and WSRC Federal Contract. It has been consistently shown throughout this case that the pro se has maintained his employment relationship with the respondent. This same relationship was governed by the Contract, by which the conditions required the respondent to establish an approved employee handbook and/or personnel manual. This manual, identified as the 5B manual with subsequent policies, controlled the at-will status of the state. The Respondent, under the DOE contract order 350.1, further binds this obligation of performance.

The question surrounding this case simply stated is this; did the petitioner perform under a pre-discharge 2.7 provision while under a inappropriate probation status, and/or did the respondent violate a unilateral employment relationship when they terminated the petitioner after him serving 14 years plus in service and complying with the conditions of the pre-discharge policy with strict compliance to procedures 2.7. The other vital issue surrounding this case is the 5B, 5Q, 8Q, Order 350.1, manuals and DOE contract is written such that the languages embodied alters the common law status of South Carolina at-will condition.

## STATEMENT OF THE CASE

### A. INTRODUCTION

This case was a simple two-count claim, which brought a wrongful termination and retaliatory discharge against the Respondent. The Petition being a minority Pro se presented specific and vital arguments to this case in such a manner to which the Magistrate Judge, District Judge, and now the Appeals Court wishes to diminish by their treatment toward an African American minority Pro se. This has lead to biased treatment, of considering material facts, racial profiling of minorities, and inappropriate conduct. The facts below show backroom jurisprudence was brought into this case. The end result created, an unjust and unpublished biased opinion formed. The minority Pro se introduced solid and structured evidence; material facts of the errors made by the Respondent, Magistrate, and District Judge in the 8/04/04 pleading, the 6/5/05 pleading, and in the 7/05/05 pleading. Being, the Petitioner is an African American Pro se and because the Fourth Circuit Courts in South Carolina choose to allow biased treatment toward minorities and Pro se's, the 4th Circuit Court is perpetuating Chief Justice Taney's legacy that "blacks have no rights which the white man is bound to respect". Dred Scot, 60U.S. 393(1856). As it relates to the present case, the presiding Judges; Kosko, Harwell, and the Appeals Court judges have now decided that a company does not have to follow their promise to DOE, nor to their employees even after signing CFR's of compliance with DOE if the same are of a minority status, which a company at their own discretion does not have to follow their policies and agreements. The fact of this matter consistently shows that the violations have been committed by either the WSRC company itself, or by an official of the company. Specifically, within this case the South Carolina Courts have not appropriately followed or considered the

material facts presented by a non-lawyer Pro se who is an African American. Normally, this petition of writ would have been filed in the South Carolina Supreme Court. However, the presiding 4th circuit judges know of their errors and have protected each other within the confines and merits of the judicial system specifically; applying as a cover 28 U.S.C. §352 (A) (ii). The laws have not been applied to the material facts of this case for a fair trial to take place, which would not be considered, and unjustly denied due to the protective shielding which prevents the 4th Circuit, Trial Court, and Appeals Court from taking responsibility for errors in judgment and discretion. For the aforementioned reasons, the matter is brought respectfully before the Supreme Court of the United States for consideration. The Statement of facts and uncontested facts to record show the Magistrate did not properly review the materials presented by the Pro se as the nonmoving party against the respondent's summary motion. Court Tr<sup>2</sup>, pg5, 6/14/04, where the Magistrate states; "we are not going to laboriously cull through those thousands of documents in that wire basket in order to determine the kernel of truth which we need to make a decision". How can a minority Pro se establish facts in the evidence presented in the documents when the Magistrate recites in the court's record that he will not review them? Throughout this entire case the Magistrate was **antagonistic** and **condescending** toward the Pro se, which devalued any material of facts presented at the 1/05/04 hearing. Review the audiotape to hear how the Magistrate readily accepted what ever the counsel for the respondent stated relevant to the minority responses. This was biasing against the minority Pro se. If any decisions had been predetermined, material evidence, and facts been ignored by the Magistrate, District Judge, and now the Appeals Court, they surely have been inappropriate ones. The Magistrate Judge showed blatant bias relating to the Statement of Uncontested Facts specifically by not following



his own instructions and allowing alteration of a Court document by the respondent counsel. The District Judge then disregarded the Statement of Uncontested Facts, and concluded there was no genuine issue within the material facts presented. Thereafter, the inaccurate report was established without the evidence of statement of uncontested facts, in its entirety. Consequently the Appeals Court affirmed the Trial Court's decision as a unpublished opinion.

#### **B. Magistrate's Background Information**

A series of hearings were conducted before the Court on motions compelling the respondent to provide key information relative to the case. The Magistrate asked the respondent counsel if a dispositive motion was to be filed. (Court Tr<sup>1</sup> pg14, 1/05/04 hearing). During the hearing, the Magistrate showed bias treatment specifically related to the time allowed for responding to the discovery requests and respondent counsel blatantly refusing the requested material during discovery without filing an order of protection. (Court Tr.,1/05/04 and cassette tape.) The Magistrate at the hearing on January 5, 2004 asked the respondent's counsel "have you filed a motion for protected order". The response was "no your honor"(See attached Court Tr. Pg.4 **Appendix H**). The Magistrate allowed the respondent to submit discovery information after the said Scheduling Order guideline, which was November18, 2003. See respondent's answers to the Petitioner request which was dated November 28, 2003 as exhibits M2, M2A, M2B, M2C, and M2D of providing the information. The respondent then provided only partial material, which prompted the Petitioner to ask the Court for intervention. The Magistrate proceeded to admonish the minority Pro se. The Magistrate did not appropriately address the Respondent's non-compliance to the Petitioner's request citing Local Rule 26, to produce entire documentation imperative to the case. During the Motion to compel hearing on .01/05/04, the Magistrate

addressed the Petitioner's exhibits as if the exhibits were separate motions filed; (See exhibits 615 and 616). (See exhibits A, B, C, D, E, and F for the Petitioner's motion exhibits). He further stated that no Certificate of Service was attached. The statement was untrue. The Pro se did in fact produce a Certificate of Service which had been appropriately attached and submitted to, which the Magistrate claimed was not filed. (See Court Transcript 1/05/04, pgs.3, 4 and 5). The Petitioner received the respondent exhibits and those were also presented to the Court as exhibit attachments to the motion filed on 12/13/03. (See the respondent exhibits 1A, 1B, 1C, 1D, and 1E). The Magistrate then construed each exhibit as a separate motion and denied them on the basis that the minority Pro se failed to follow the Local Rules of South Carolina 7.06. The Magistrate used each exhibit as a separate motion that he said needed Certificates of Service. Certificates of Service were not required for **listed exhibits** of ongoing requests for the same materials. With respect to South Carolina Local Rule 7.06, the minority Pro se did submit timely and complied with the proper filing of the response for the December 2003 motion. The Petitioner Pro se's requests were repeatedly ignored by respondent's counsel, which the Magistrate Court inappropriately allowed. (See exhibit 616 and for motion filed at Tab 3). (See exhibits A, B, C, D, E, and F for Petitioner's requests).

The Magistrate demonstrated racial biasing allowing the respondent's counsel to violate a Federal Rule of Civil Procedure regarding discovery requests and the local rules of the state. Certainly, respondent counsel knows better than to not refuse or object to a request without filing a protection

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1 Tr. represents Court Transcript

2 Petitioner did not attach Certificate of Service to the following Court's exhibits A and B because they were identified as exhibits.

order. This behavior relative to this case is supported by Justice Taney's theory of an African American with regards to equal and due process. The Court will not and failed to admonish Counsel due to **majority** versus **minority**. As a result; the minority Pro se had to conduct 5 separate depositions from WSRC management and staff, without having proper material from the Respondent. This was a tactic to impede proper and extremely vital deposition questions. The magistrate allowed more than 30 days in favor of the Respondent and Counsel to prepare and file their motion for Summary of Judgment. The non-lawyer Pro se was given only 15 days conditionally to respond. (Court Tr., pgs. 14-18 at **Appendix H**). Thereafter, a status hearing was held 6/14/04 on a Pro se motion to dismiss without prejudice. During the hearing 6/14/04, the Magistrate allowed the respondent to file a second brief, receive a responsive brief, and state a response without the minority having the same rights. The Magistrate stated "if I choose to go forward on the Summary of Judgment and issue a Report In Recommendation, I want to go forward with an agreed upon statement of facts". (See attached Court Tr, 6/14/04 pgs.5-10 **Appendix I** and review the audio cassette at **Appendix J**) Further down in the magistrate's instructions, he states "only the facts necessary for this Court to determine Motion for Summary of Judgment will be included in these statements of undisputed facts. All but irrelevant material will be excluded". The Magistrate Judge gave contrary and conflicting orders as to what he specifically instructed the parties and the Court. The Magistrate Judge switched from the Statement of Uncontested Facts in this case to points that are contested and disputed and he switched from what he stated where the determination was to come from. The Magistrate Judge drafted his (R&R<sup>4</sup>) and introduced disputed material from the Respondent's initial Summary Judgment [40-1] as if the material was true and undisputed. The determination

stemming from this was outside the instructions relied on. Therefore, the courts should reject the Magistrate's Report. The Magistrate can not use the Respondent's initial [40-1] instead [41-1] especially after ordering by written expression where and what the determination would come from. The Magistrate used facts that were changed within the (R&R). Review the Court's Tr. pg5, items 3-25, and pg.10, items 1-19 from 6/14/04 hearing at **Appendix's I and J** to verify the Magistrate violated what he communicated. He communicated one thing then did the opposite. Look into the same Court's Tr., pg10 items 2-16, on 6/14/04 the magistrate specifically tells the minority Pro se where the Summary of Judgment decision was to come from. Therefore, he could not inject other undisputed facts to aid the defense acting as an advocate. The Magistrate stated, "at the conclusion of this discussion, then you will recite into the record, and I will come back for it, these undisputed facts. And I will rely upon those facts, if I decide to issue a report and recommendation on the summary motion". (Not any other facts or undisputed facts could the Magistrate use or inject against his specific instructions given to the minority Pro se and the Court). The Magistrate specifically told the minority Pro se that he will be arguing The respondent's second brief. Court Tr. 6/14/04, pg.22 where

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3 (pg 5, ¶6), (pg 6, ¶13), (pg 6, note items 16-20), (pg 7, notes 21, 22, 24-27), (pg 8, notes 28, 31, 32), (pg 9, notes 38, 39, 40 and 43), (pg 10, 44-47, 49 and 53), (pg 11, notes 54, 56, and 58), (pg 12, notes 63 and 68), (pg 13, notes 69 and 75), (pg 15, notes 79 and 80), (pg 16, notes 81 and 82), (pg 17, note 83), (pg 19, note 84), (pg 20, notes 85-89), (pg 21, note 90), (pg 22, notes 91-95), (pg 23, notes 96 and 97), (pg. 25, notes 100 -105), (pg .26, note 106), (pg 27, notes 107-109).

4 (R&R) is understood as Magistrate Report and Recommendation filed July 19, 2004.

the Magistrate states “you know what issue he’s going to raise, all you have to do is look at his brief. He’s laid them out in detail”. Contrary to the Magistrate’s specific instructions, the Magistrate himself included material that is not in the respondent’s second brief nor was apart of the Petitioner’s deposition. The Magistrate started out in his (R&R) on 7/19/04 using the uncontested facts as instructions he recited into the court record that he would rely on but switched to disputed facts as shown in (Petitioner note point<sup>1</sup>).

The Trial Court Judge on page 5, of his Order granting the Respondent’s motion tries to excuse the Magistrate’s advocate conduct by stating in his Factual Allegation Section that the minority Pro se “alleges” and then that “what the plaintiff does not appear to realize is that the magistrate Judge could determine that a fact was uncontested despite Lawrence’s refusal to include that the fact in the statement of uncontested fact if, for example the fact was admitted by the plaintiff’s deposition” More importantly, points which the Magistrate uses do not originate from the Petitioner’s deposition in which the Trial Court District Judge tries to mislead the reader in upholding the inappropriate position. The magistrate’s references come from the respondent’s initial summary [40-1]. Judge Harwell referencing the petitioner deposition is a ploy to misguide the reader and Court. The Petitioner filed a Statement of Disputed Facts against the Respondent’s allegations. Therefore, the Respondent’s false documents can not be concluded as Material of Facts by which a legal conclusion is drawn from especially if the allegations are issues of dispute. See South Carolina Court of Appeals, in Bari v. Aiken Regional Medical Center, 352 S.C. 271, 573 S.E. 2d 830 (2002). In light of further misconduct and accountability of the magistrate, the respondent’s counsel requested in his second brief that the Magistrate to step out from his position



of authority into an advocate role to pick, and choose certain selections or portions from the respondent's initial summary and disputed material what the Magistrate thinks and feel would look favorable in presentation to the eyes of a reader and the Federal Court. The scenario table was exclusively set such that if the decisions of a Magistrate, District Judge, and Appeals Court were all in favor of the respondent agreed upon case, normally it must be the correct decision and no court would oppose the line of judicial media filters. However, these judges or filters of the courts have been prejudicially clogged with racially profiling and biasing in determining this case. The previous Courts failed to uphold their responsibility to the minority Pro se under the United States Constitution and unto the office served to fairly review this case. The Pro se's material facts were not appropriately considered vital to this case and the Courts contravene its duty on the basis of status and ethnicity. Reflecting the magistrate's biased treatment toward the Petitioner, he carefully selected material from the white Respondent's first Summary Motion [40-1] and not from the respondent second Summary Motion [41-1]. Not only did the Magistrate, allow counsel for the respondent to change court documents, the Magistrate used the altered version in his (R&R), the District Judge and the Appeals Court also made allowances for the blatant and criminal changes, then followed the faulty statement of uncontested facts that the counsel for the respondent changed. The respondent in his 6/21/05 brief, defends his actions of changing a crucial court documents<sup>5</sup> The changes did indeed adversely affect the case. Throughout the initial Summary 40-1 respondent counsel presented certain specific documentation contrarily as the

5 Inconsequential, irrelevant, inadvertently done, no court transcript was available, not relevant to the summary, words was not used by the magistrate, and the changes did not affect the meaning.

Pro se having an attendance issue. Of course this was secretly omitted from the statement of uncontested facts when the respondent served to the court and petitioner the record statement because it establishes that the Petitioner followed the conditions imposed by the Respondent and there were no grounds to terminate the Petitioner's employment. (See all material of fact in 6/14/04 Court Tr., pgs 13-17 and in the Pro se's 7/05/05 pleading pgs.2-17). The 7/05/05 pleading with the supporting exhibits shows absences were all approved, excused or granted. Therefore, if the absences were granted, or the absences were medically related versus employment, that the Animus's of the Respondent's staff Dr. Botnick is a consequence, or that the application or DOE Order 350.1 supports a unilateral position, surely, the changes are the very important. Another important factor relating to the altered documentation is one where the Magistrate used the changed document in his report. Was the Magistrate aware that the documentation had been altered or was there bias treatment towards the Counsel? Did the Magistrate trust that his decision was based on proper justice applied to this case and not of his own merit to which his decision under the rules of misconduct is protected? The Magistrate told both the court and minority Pro se on pg21, 19-24, Court Tr., **Appendix I** and **J**, that the agreed facts are what were recorded on the tape recording. Then, the Magistrate served upon the petitioner his Order 6/14/04 **Appendix F** identifying where his decision would come from. However, the facts that the Magistrate did use are the secretly changed facts presented by the respondent counsel, as well as disputed facts from the respondent's initial summary motion [40-1]. For example, in the statement of facts (¶9), the Magistrate used the word "absent" in his 7/19/04 report on pg.5 of 30, and Counsel for the respondent used the words "employment absence" in the statement of uncontested facts instead of what was specifically recited into the court record. The established material fact was



**medical absence.** Clarification of the absence defines whether or not the Petitioner was covered and approved by management and the personnel 5B handbook accordingly. The Magistrate also omits the same points the respondent counsel secretly omitted; **"By April 2000, Lawrence was warned that unexcused absences would result in discipline, and future absences - I'm sorry, I might have to ask him (plaintiff) did we agree to that or not would be limited to genuine emergencies"**? The Petitioner responded: "We agreed to that". (See attached Court Transcript 6/14/04, pg13, items 8-13). The Magistrate introduced the same point as a disputed fact from the respondent's initial summary motion [40-1] at the defendant's Tab 22 on pg 7 of 30 of the magistrate's (R&R enclosed **Appendix D**). The Magistrate failed to introduce the point as a material fact that was recited in the record on pg 13, items 8-12, Court Tr., 6/14/04. Compare the Court's Tr. from 6/14/04 to the magistrate's report. See also the Magistrate's ¶9, ¶11, ¶16, ¶17, ¶18, and ¶49 words were changed and used. This was specifically pointed out to the courts and a judicial misconduct form was filed that listed the inappropriate conduct of the Magistrate. (See Pro se 7/05/05 pleading pgs 30-33). Within the Magistrate's report, points that were changed are listed above. Moreover, material was introduced that was never originally submitted to the court. The Magistrate attempts to reference material that was never served upon the Petitioner by the respondent. Notes 107, 108, and 109 were never apart of any previous document severed. (See pg.27 of 30 in the Magistrate's (R&R)). How can the Magistrate write about 107, 108, and 109 if these positions were never supported in any of the previous submitted pleadings from the respondent? This suggests conspiring with the respondent counsel secretly which is indeed a violation of his office and the Federal Rules of Civil Procedures. To further show the willful intent regarding the changing of a court document and the

Magistrate following the faulty document, Mr. Thompson's own letter on 6/15/04, a day after the 6/14/04 hearing, stated "I completed my statements of uncontested and contested facts today and have overnighted copies to Mr. Lawrence. I also left him a voicemail offering to fax or email them. The clerk was very helpful in rushing a copy of the hearing tape to me". This proves counsel had full knowledge of the material facts established but chose to criminally change the statement of uncontested facts after receiving an audio copy of the 6/14/04 hearing. This was tampering with court record evidence that violates the law and that act should have been punishable under the similar statutes as perjury and tampering with court evidence. Counsel still should be sanctioned for the criminal intent which the Magistrate, District Judge, and Appeals Court made allowance for, even after the Petitioner specifically directed it to the court's attention in the following pleadings: 7/1/04, 8/04/04, 8/24/04, 6/5/05, and 7/05/05. To show the unfairness, and biasing, the white respondent counsel was not punished. The (R&R) shows a multitude of errors pointed out in the 8/04/04 and 7/05/05 pleadings from the Pro se. The District Judge allowed and excused the errors, and the conduct involved. In Judge Harwell's Order, **Appendix C**, he adopted the faulty (R&R) from the Magistrate. Then the Appeals Court affirmed from the unpublished opinion from the faulty (R&R) by way of the District Judge's Order. The evidence is clear when time is allowed to review the Pro se's material of facts that there were errors made by the lower courts and therefore an unpublished opinion hides the errors and the minority material facts become un-followed and white-washed in a dominant biased Court system of South Carolina. The actions of applied backroom jurisprudence as the standard regarding the black minority pro se's who relied on the judicial courts for justice. In addressing biasing of the minority Pro se, **Second Circuit Judge Jerome Frank wrote in Courts on Trial: Myth and Reality in American**

Justice 414 (1949) that "to recognize the existence of such prejudices is the part of wisdom. The conscientious judge will, as far as possible, make himself aware of his biases and, by that very self-knowledge, nullify their effect". It is hard for the Courts in this case to accept or identified that they were biased.

"**The INFORMAL BRIEF**" with a Statement of Fact contained with supporting documentation attached on June 6, 2005 presented the questions of law concerning employment handbook theory and contract application that the Respondent's 5B manual and DOE Contract Order 350.1 with all supporting provisions therein modifies the at-will status of South Carolina. The minority Pro se has challenged the biased 4th circuit court with evidentiary facts from previous affirmed cases that in such cases involving a question of unilateral contract, handbook policies, a pre-discharge and termination provision, that once a determination has been made the Magistrate, Trial Court, and Appeals Court must defer to a jury determination as to the inferences and conclusions to be drawn from the language within the writings. In addition, the writing exists from the respondent's 5B handbook that by application alters or modifies the at-will employment relationship. In this specific case the Trial Court confirmed the application of WSRC's 5B Manual procedures, proceeded to interpret the languages embodied in the WSRC 5B Manual and DOE contract 350.1 and then applied the same to the Trial Court version of the facts of the case. The Petitioner presented that South Carolina provides for written modification of the at-will employment relationship; that the 5B Manual is such a written modification and that **the Petitioner is entitled to get to a jury on his claim of Wrongful Termination and Retaliatory Discharge under the law when title VII Amendment to Constitution of the United States guarantee trial when a controversial issue involves common law suits such as the at-will status**

and when the state follows such cases involving determining the existence of a unilateral contract is province for a jury and jury instructions. The minority Pro se firmly states with absolute facts, both the Appeals and the District Judges improperly affirmed and granted the respondent's motion for summary of judgment. The Appeals Court stated that they have reviewed the record and affirmed that the reasons cited by the District Judge. However, facts to the record show the affirmation was based on false allegations and a faulty statement of uncontested facts, illegal used material outside the magistrate Order. Certainly no writings were made to show what was specifically reviewed from the District Judge's Order versus the material facts presented by the Pro se. The minority Pro se states no such writing of affirmation exists because the record that the Appeals Court followed was replete with errors followed by the District Judge. In addition, the Pro se pointed out that the District Judge in his Order filed 4/4/05 made errors. (i.e. on pg. 3, the District Judge specifically wrote in his order that "the defendant terminated the plaintiff due to plaintiff's excessive absenteeism, insubordination, and failure to follow policies and instructions given by management in connection with attempts by management to correct his absenteeism")? The District Judge interpretation is not factual. The record which the Appeals Court is trying to hide shows a complete contradiction to the District Judge Order. Review the record exhibits WSRC Lawr 676 and 678 which state the Pro se was terminated for only failure to follow the terms of probation and insubordination which is different then what the District Judge untruthfully told the court. The material facts show the Pro se did follow the terms and conditions of the inappropriate probation. Remember the District Judge stated the Plaintiff failed to correct himself. However, the record before the courts validated the Pro se appropriately met the conditions of the inappropriate 2.7 pre-discharge policy for 11 months according to attached exhibits as **Appendix L**

WSRC-LAWR - 549, 577, 604, 609, 611, 614, 619, 625, 644, and 650). This contradicts what the case record from the District Court Judge's Order, pg 3 specifically documents. Even when the Petitioner complied with the terms of the pre-discharge provision 2.7, that limited the employee from the common law at-will condition, the respondent still terminated the Pro se 1 month short of completing the inappropriate probationary period and they did it from personal animus's. Review the petitioner's previous work assessments to see the Pro se evaluation yearly showed excellent to above average. With respect to fairness, of course this would not be reviewed by the biased Appeals Court, regardless of the above evidence and exhibits presented. The Respondent's inappropriate action of an employee reprimand applied the discipline policy 2.7 pre-discharge provision from the employees' handbook, but deviated from the pre-discharge policy when it did not benefit their need. See Miller at 127 . Actions were then placed against the Petitioner who was at the point of ending the probation condition under the pre-discharge 2.7 provision. Nevertheless, the Appeals Court reached it's conclusion without proper reviewing the facts and accepted the Judge's statement by reasons unsupported versus on opinion rather than justice. This is detrimental to the black minority and or Pro se who choose to represent themselves under a Pro se status in the 4th circuit in an employment claim under a unilateral contract handbook theory. Even with evident provisions instituted from the writing and languages in an employer and employee's relationship 5B employees handbook manual, the 4th circuit Court of Appeals has now affirmed these conditions do not apply if a minority non lawyer Pro se presents the evidence thereof. The other important point from pg.3 is the District Judge trying to use the Respondent's Local Rules Interrogatories LCR 26.03 as a material of fact for support. Under no condition can the District Judge use an interrogatory point and



conclude it to be a fact when the allegation is an issue of dispute. Facts to record from the minority Pro se's pleading on 7/05/05 totally destroys the Respondent's, Magistrate's, District Judge, and the Appeals Court position. It is this very existence the 7/05/05 pleading that birth the unpublished opinion from the Appeals Court regarding the Petitioner's attendance record. By those material facts from the Pro se that is contrary to the Court's version is the basis upon which specifically this biased Appeals Court is trying to wrongfully uphold and cover their position. At the present, the content of this case isn't about the material facts involved, but rather the powerful dominant judicial front of brotherhood judges. The Appeals Court is biasing and blindly following the District Judge's Order. The District Judge's record reveals how Summary of Judgments are defeated or how they are approved from the moving party and non-moving party. The law according to Federal R. Civ. P.56 (c) states if there is no genuine issue as a material fact from the non-moving party, then the moving party is entitled to the Summary of Judgment emphasizing on vital major issues. The District Judge cited the following cases to support the decisions his judicial brotherhood followed: Shealy vs. Winston, 929 F. 2d 1009, 1011 (4th Cir.1991), Id (quoting Anderson vs. Liberty Lobby, Inc., 477 U.S. 242, 247- 48 (1986) with emphasis directed to the requirement that there be no genuine issue of material fact. What is the Appeals Court stance regarding that on June 14, 2004 hearing, the African American Pro se and counsel for the respondent **established material facts** to this case for the record? See the attached Court Tr. from June 14, 2004, pgs.11-22 with emphasis on pg.22 where the magistrate recites what was established were material of facts. Remember a summary of judgment as pronounced by the District Judge should not have any genuine issue of material fact. What legal consequence will this panel of bias judges face given the fact that on page 19 of the Plaintiff's Objections and Request to Strike the Defendant's Unsub-

stantiated Reply filed July 5, 2005, the advocate Magistrate recited into the Court that day, "the question becomes, are the policies, do they rise to the level of a contract" (Court Tr., Pg.20, 6/14/04). In line item 18, pg 20 of the Court Tr., the Magistrate states clearly into the record "that's a legal issue but based upon a factual predicate". Being presented by an African American Pro se, this creates the Judicial blinders to be worn again because this brother hood of Judges apparently wishes to ignore and white wash the record due to the unsubstantiated material of facts and the errors blatantly displayed throughout this case from both judges and the respondent involved. The acceptance and affirming from the opinion is a systematic way to devalue the minority Pro se's evidence just because the African American Petitioner silhouette is of the minority status and is not of the same legal status of the white anglo-saxon respondent counsel, Magistrate, District Judge, and now the Appeals Court for the 4th circuit. The following questions still remain; was the evidence presented by the minority Pro se properly reviewed, and if so what specifically documents the parts from which a legal answer was applied? What material of facts was applied to and against the law? Finally, what social precedence of previous cases was applied from both the Court of Appeals and Supreme Court?

### C. ARGUMENT

The question still remains unanswered, whether or not the language in the 5B manual, DOE contract, and **DOE Order 350.1** creates a unilateral contract? Even the Magistrate on 6/14/04, pg.20, states "the question becomes, are the policies, do they rise to the level of a contract"? In line item 18, pg.20, court Tr. 6/14/04, the Magistrate states "that's a legal issue but based on a factual predicate" Remember, in the district judge order, pgs3-5, he specifically states the conditions for Summary Judgment and that there be no genuine issues of facts. Either the Magistrate was wrong by



stating "that's a legal issue" or the District Court is not following the law as pronounced by the District Judge on pgs3-5 of his order regarding the legal standard in comparison to the Magistrate's statement. **Material facts:** Both magistrate and district judge recognized the existence of the 5B manual and especially 2.7 and 2.9 procedures within the 5B manual. Facts to the record the respondent counsel admitted to, on 6/14/04 pg12, Court Tr. that the Defendant uses a system of contacts for disciplinary actions, which is also a part of procedure 2.7 that is apart of the 5B manual. **Material facts:** The records indicate that the respondent was bound by the DOE/ WSRC contract to follow its established policies. Court Tr. 6/14/04, pg11, item 25, pg12, items 1-5, pg17, items 3-4 and items 14-16, pg18, and pg20, items 8-18. The essential elements of the claim against the Respondent are such that; 1) WSRC had enforced at all times a policy and procedural manual identified as the 5B Manual an employee handbook covering all relevant aspects of the employment relationship including a pre-discharge and termination procedure. 2). The Petitioner was terminated in violation of 2.7 pre-discharge procedure also, 2.9 termination procedure of the unilateral agreement defining the employer and employee relationship. The South Carolina Courts follows the traditional at-will employment law unless modified in some way by the writing construed as an employment agreement, handbook, policies and procedures; the employer has the absolute discretion to terminate an employee at any time for any reason. Nevertheless, the Supreme Court of South Carolina first modified this at will status in 1987 in the case of Small v. Springs Industries 357 S.E. 2d 452 (S.C.1987). Springs was upheld in Miller v. Schmid Laboratories, 414 S.E. 2d 126 (S.C.1992). See Kumpf v. United Telephone, 429 S.E. 2d 869 (S.C. App. 1993); and Williams v. Reidman, 529 S.E. 2d 28 (S.C. App. 2000). Now suddenly, the 4th Circuit Courts want to abandon

previous holdings that involved cases with similar fact patterns as the minority Prose's in this present case just because the Petitioner has entered the arena being an African American Prose status vs. an experienced attorney at law, the Magistrate, District Judge, and Court of Appeals who are white. The courts surely their position is in default under the laws of South Carolina as it is presently known, that the existence, interpretations and applications of writings to the employment relationship are questions for a jury and jury instructions unless the evidence is clear and undisputed.

The Respondent false allegations and altered documents can not be concluded as material of facts by which a legal conclusion is drawn from. The South Carolina Court of Appeals, in Baril v. Aiken Regional Medical Center, 352 S.C. 271, 573 S.E. 2d 830 (2002), reversed a lower court's entry of summary judgment on a fact pattern similar to the one in this case. Regional Medical Center had published a handbook, which they contended was not apart of the employment relationship due to the disclaimers and statements found within the handbook. Plaintiff Baril contended that the handbook, as well as certain practices of the Defendant, were part of the employment relationship. In reversing the summary judgment, the South Carolina Court stated: Summary judgment isn't appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied". Moreover, Summary Judgment is a drastic remedy which should be cautiously invoked so no person will be deprived of a trial of the disputed factual issues. (Emphasis supplied) (Citations omitted).

The minority Prose disputes the Trial Court version and statement of South Carolina law as expressed in Smalls vs.

**Springs Industries, 388 S.E. 2d 808 (S.C.1990) (Small II)** the court failed to fully state the holding of the South Carolina Supreme Court: The termination of an at-will employee normally does not give rise to (a) cause of action for breach of contract (citation omitted). However, in certain limited situations, an employer's discharge of an at-will employee may give rise to a cause of action for wrongful discharge such as where the at-will status of the employee is altered by the terms of an employee handbook. **Small v Springs Industries, 292 S.C. 481, 357 S.E. 2d 452(1987) (Small I)**. In the following cases that were affirmed and reversed in contrary to the now bias Court of Appeals are: **See first Small I; then see Small II; Miller v. Schmid Laboratories, Inc., 414 S.E. 2d 127 (S.C. 1992); Kumpf v. United Telephone Company of the Carolinas, 429 S.E. 2d 869 (S.C. App. 1993); Jones v. General Electric Company, 503 S.E. 2d. 173 (S.C. A pp. 1998); Prescott vs. Farmers Telephone Cooperative, Inc., 516 S.E. 2d. 923 (S.C. 1999); Williams v. Riedman, 529 S.E. 2d. 28 (S.C. App. 2000); Conner v. City of Forest Acres, 560 S.E. 2d 606 (S.C. 2002); Baril v. Aiken Regional Medical Center, 573 S.E. 2d 830 (S.C. App. 2002).** More importantly, the Magistrate, the District Judge, and the Court of Appeals have overlooked previous holdings regarding these cases in South Carolina. The cases at their very foundation were affirmed on contract issues based on a unilateral employment offers that by the written language, the act of working **14 plus years**) under the existence of an offer embodied in the written language, altered the traditional *at-will* status in the state. Similarly, this case has the same pattern of facts and therefore the law should also apply similarly. In addition, under those standards the Supreme Court and the Court of Appeals reversed so many cases that the Summary of Judgment was granted to the employer Defendants by the lower courts. This has set precedence in the judicial highway to follow from a

procedural outline. Contrary to previous holdings of South Carolina Supreme Court, and following the judicial highway, the written opinion in its most vague description received from the Court of Appeals conflicts and goes directly against the decisions made is similarly related to the present minority Pro se case. As stated by the *Baril Court supra*, it would be the exception where a motion for summary judgment would be granted on any issue related to the relevance of a handbook or the conclusion or inference to be drawn there from. Under current South Carolina law, all such questions are for the jury. The Plaintiff working as a long term permanent employee under the DOE and WSRC contract agreement as an employee for 14 plus years in reliance of the offer and obligations set fourth under the work period a unilateral contract altering South Carolina's *at-will* status. The Order 350.1 and the 5B employee handbook is also sufficient enough evidence or consideration to make the promises (the employee's handbook) binding. **Appendix J** of the attached DOE Contract with the Respondent is only a small section identify a contract obligation to have employees personnel policies, and others contract requirements regarding the safety obligations that was suppose to be followed by the defendant. As in the case of *Springs, 357 S.E.2d at 454, 455*, the Court reasoned that, "It is patently unjust to allow an employer to couch a handbook, bulletin, or other similar material in mandatory terms and allow him to ignore these very policies as a gratuitous, non-binding statement of general policy, whenever it works to his advantage." The court held a jury can consider an employee handbook, along with other evidence, in deciding whether the employer and employee had a limiting agreement on the employee's at will status.

*In Miller at 127*, South Carolina confirmed *Springs*. In *Kumpf at 871, 872* the court reasoned that a company

cannot announce a policy with the view of obtaining the benefit of the policy through improve employee relations and quality of the workforce and then treat I promise as illusory. *In Williams at 32, 36*, Springs was cited. The Court held that the existence of a handbook could give rise to a cause of action for wrongful discharge and that the question should be submitted to a jury when (1) the existence of a contract is questioned; and (2) the evidence is conflicting or admits of more than one inference. Unless the law has changed the minority Pro se claims are specifically reinforced by the previous holdings and Magistrate's reciting into the court record on 6/14/04, pg 20 that as a result of the 5B manual employee handbook and DOE Order 350.1, does the policies therein alters the at will status and rise to a level of contract. The other inferences include the minority as being a third party beneficiary from the long term contract between WSRC and DOE as a permanent employee. Most importantly documented the bias Magistrate states **"That's a legal issue but based upon a factual predicate."** Court Tr.,pg.20, 6/14/04 hearing of Lawrence v. Westinghouse. Aside from the various misreading from the Respondent counsel, the Magistrate, and the District Judge using interrogatories, as a fact. This case is replete with so many errors that the Court of Appeals surely if at its very small minute reasoning must apply the laws as mentioned in the above cases. The Court's willingness to only use a small portion of the statements of the uncontested facts is an **attempt to draw a legal conclusion as to what writings embodied the employee relation and the level of the 5B Manual rises to regarding the at will status without considering the entire record, the DOE Contract, the CFR's signed by the defendant, the contract requirement regarding 350.1 Order from DOE for the defendant to have suitable personnel policies, the plaintiff's employment assessment as well as the Plaintiff's employment relationship with**



**the Defendant.** It is the legal conclusions that the unfair Magistrate drew from, which were in **default** and **outside** the boundaries of where the determination as described in this (Court Tr.6/14/04) was to come from. The source from which it was to come from was the uncontested statement of facts as plainly shown in the Magistrate's Court Order. See **Appendix F.** Therefore, the court could not offer conflicting instructions so much so to be an advocate by giving instructions in a Court Order on 6/14/04 to the Petitioner but doing just the opposite in action. The law today in South Carolinas Courts is of the position that in every handbook case where a question was manifested involving a contract issue either implied or through performance (unilateral), the South Carolina Supreme Court has said that the interpretation of the handbook language is an issue for the jury. **Summary judgments in favor of the Defendant in each cited case were re-versed and the case remanded for trial by a jury.** This case encompasses the same arguments. Therefore, the law should still hold instead of the Petitioner's profiled status as a non lawyer who is an African American Pro se. The Trial Court's version goes against what the **2.7 promises** indicate in complying to the conditions and restriction arising from placing the Petitioner on the inappropriate probation. Remember, the DOE contract requires the Respondent to follows its policies per batam in the 5B manual. Court material fact on 6/14/04 presented in **Appendix G** documents the respondent was obligated under a promise to follow their policies in concert with the probation that if the Petitioner was off or absent, it had to be for emergencies supported by a doctor excuse and by those conditions the Petitioner's employment would be protected as a part of the contractual obligation for the Respondent to keep their promise while the Petitioner was under the pre discharge provision 2.7. The record is and was clear as to the emergency of the Petitioner's son's ongoing medical condition and medical history file from the

Petitioner's son's physician. The Petitioner provided to the record his doctor's excuse, the admission to the hospital dates of son's stay which preformed the Petitioner obligations under a unilateral contract of the pre discharge 2.7 provision and the Respondent's conditions. Still, the minority Pro se was terminated after successfully working under the promise of the 2.7 pre-discharge provision after 11 months of compliance and providing the hospital records of son's critical health issue that caused the absence related to the petitioner's termination and the petitioner provided his own personal physician doctor excuse relating to complying under the conditions placed that is contrary to the Magistrate, District Judge and now the bias Court of Appeals decisions. The material facts are the contacts or monthly evaluations listed below which appear as the Petitioner's **Appendix L** also were presented to the Trial Court showing the Respondent supervisor and Petitioner signed monthly contacts of agreements as required by the 2.7 pre discharge provision which indicated the Petitioners for 11 months obeyed under the provision and the Respondent **abridged and violated their duty under the SB manual 2.7 provision and their duty and obligation to DOE as recited by the Respondent Counsel on 6/14/04.** See monthly contacts at **Appendix L**. To show the magistrate and district judge was off base when they specifically told the court the petitioner fail to correct any alleged act regarding attendance. Material facts present the Court specifically identified the respondent's staff doctor Robert Botnick had personal animus against the pro se and documented he was targeting the petitioner in exhibits listed in the plaintiff's 7/5/05 pleading. L4<sup>12</sup> notebook. The record presented to the Courts identified the respondent's supervisor Ralph Thigpen was responsible for this cause of action that is before the court. Thigpen's record before the magistrate, trial court, and the appeals court factually shows Thigpen had a history of cursing employees and



management. Thigpen had a history of causing other employees termination as identified in his deposition pg. 34, item 16 and pg. 22 items 7-13. Thigpen cursed all his direct management at WRSC. He threaten and cursed his employees who worked under him. Thigpen had been written up on several occasions for being an intimidator and violating the respondent's employees and Rules of Conduct. Thigpen's has along extensive history of cursing his employees and the record before the courts identified Thigpen's chronic behavior and violation of the respondent's Rules of Conduct. Thigpen was a habitual violator of the respondent's policies including having sexual intercourse while working on the respondent's job. The court was presented with this information in Thigpen's notebook exhibit L2<sup>10</sup> also presented in the petitioner's 7/05/05 pleading. Countless of exhibits, affidavits depositions statements from senior WRSC management staff against Ralph Thigpen's distasteful behavior. Yet, the decision to terminate the minority pro se was directly related to the animus directed against him from Thigpen, Botnick, Dave Olson, Seaborn Warren, and WSRC Human Resources senior manager William Sokolo. The Petitioner pleadings specifically identified that the respondent actions to terminate his employment is unrelated to his work performance and managers familiar with the 'system' used that familiarity to manipulate the process used and inappropriately built a systematic process to carry out their plan. **Material of fact:** The respondent counsel never **classified or clarified** the petitioner absences because the WSRC employment personnel manual allows for time off in various sections such as policy 2.12, 2.24, 2.19, 2.23, 3-3, ...etc when approved by management. The questions then becomes was the petitioner absences approved, granted, and excused by the respondent? Because the respondent supervision was for years violating their own policies regarding attendance and the facts to the record shows that

WSRC management was approving the petitioner's time off from work under the provisions in the employees handbook, but still writing a consequence for their approval against the plaintiff is what the respondent counsel and the courts is trying to suppress. For this reason, the respondent counsel omitted these points from the statement of uncontested facts.

### **REASONS FOR GRANTING THE PETITION**

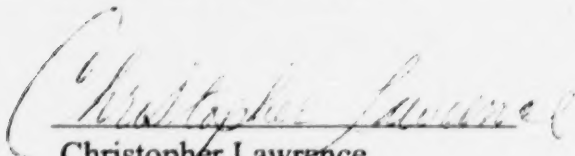
The minority Pro se prays that equal and non bias consideration to this Writ on Certiorari be granted for the following mentioned above and the lower courts usage of facts outside of where the determination was to come from. The Trial Court and Court of Appeals decisions conflict with pervious holdings involving cases with the same fact patterns. Errors in biasing and profiling Pro se's and minorities violate the constitution for equality, civil rights, and equal fairness. The minority Pro se substantive right guaranteed under the Constitution have been abridged by the Magistrate, Trial Court and Appeals Court treatment toward black Pro se's. Trial Court and Court of Appeals have departed from the laws that govern questions for jury and jury instructions in the issues involving contracts and the at will common law cases. Allowances under current judicial misconduct rules violates the office and constitutionally which it servers, allowing judges to be totally wrong in decision and opinion but untouchable for accountability hiding behind the merits of a ruling statue.

The Pro se material of facts versus the legal status of Judges who know the law is now the essence of the case. As pointed out in the text the importance of this review on the plaintiff's Writ structures how non lawyers who are minority Pro se's material of facts are considered and how cases with similar fact patterns must be followed regardless who is

## CONCLUSION

The petition for a writ of certiorari should be granted for reasons mentioned herein the case style above. The petitioner seeks the lawful opportunity to have a fair hearing on appeal from the Fourth Circuit to review whether the Magistrate violated his Order and acted as an advocate. The petitioner seeks a fair hearing against the biasing and profiling of minority petitioner that abridged his civil and equal rights under the United States Constitution by the District and Appeals Court in not considering facts to the record. The petitioner seeks further to show the Rules protecting a judge's decision is unconstitutional when grossly abridges procedural due process. The petitioner seeks further the opportunity under the United States Constitution and South Carolina Law governing common law and employment at-will statues the right to a fair hearing on the issues that are in dispute regarding contract employment applications.

Respectfully submitted,

  
Christopher Lawrence

Pro se Petitioner

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(678) 344 - 4518

Date:

January 12<sup>th</sup> 2006

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**JUDGMENT**

Filed: August 23, 2005

**UNITED STATES COURT OF APPEALS**

for the  
Fourth Circuit

No. 05 -1506  
CA- 03 - 484 - RBH

**CHRISTOPHER LAWRENCE**  
Plaintiff – Appellant

v.

**WESTINGHOUSE SAVANNAH RIVER COMPA**  
Defendant – Appellee

-----  
Appeal from the United States District Court for the  
District of South Carolina at Aiken  
-----

In accordance with the written opinion of this Court filed this day, the Court affirms the judgment of the District Court.

A certified copy of this judgment will be provided to the District Court upon issuance of the mandate. The judgment will take effect upon issuance of the mandate.

“s/ Patricia S. Connor”

Patricia S. Connor  
CLERK

**APPENDIX A**



UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

No. 05-1506

CHRISTOPHER LAWRENCE,

Plaintiff – Appellant

versus

WESTINGHOUSE SAVANNAH RIVER COMPANY LLC,

Defendant – Appellee

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Appeal from the United States District Court for the District of  
South Carolina, at Aiken. R. Bryan Harwell, District Judge .  
(CA-03-484-RBH)

Submitted: August 18, 2005

Decided: August 23, 2005

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Before WIDENER, WILLIAMS, and MICHAEL, Circuit  
Judges.

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Affirmed by unpublished per curiam opinion.

APPENDIX A

Christopher Lawrence, Appellant Pro Se. Charles Franklin Thompson, Jr., MALONE, THOMPSON & SUMMERS, L.L.C., Columbia, South Carolina for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Christopher Lawrence appeals a district court judgment adopting a magistrate judge's report and recommendation, granting summary judgment to Westinghouse Savannah River Company LLC and dismissing Lawrence complaint. We have reviewed the record and the district court's order and affirm for the reasons cited by the district court. See Lawrence v. Westinghouse, No.CA-03-484-RBH (D.S.C. Apr. 4, 2005). We deny Lawrence's motion to strike the Appellee's informal brief. We dispense with oral argument because the facts and legal contentions are adequately presented in the material before the court and argument would not aid the decisional process.

AFFIRMED

APPENDIX A

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

**Lewis F. Powell Jr. United States Courthouse Annex  
1100 E. Main Street, Suite 501  
Richmond, Virginia 23219-3517  
[www.CA4.uscourts.gov](http://www.CA4.uscourts.gov)**

**Patricia S. Connor  
Clerk**

July 12, 2005

**Telephone  
(804) 916-2700**

**CONFIDENTIAL**

Mr. Christopher Lawrence  
2740 Highpoint Rd.  
Snellville, GA 30078

**No. 05-9024, In the Matter of a Judicial Complaint  
Under 28 U.S.C. § 351**

Dear Mr. Lawrence:

Enclosed is a copy of an order dismissing your judicial complaint.

You have the right to petition the Fourth Circuit Judicial Council for review of this order. If you choose to file a petition for review, your petition must be filed in the clerk's office **no later than August 11, 2005**. See Rule 6 of the *Rules of the Judicial Council of the Fourth Circuit Governing Complaints of Judicial Misconduct and Disability*.

Yours truly,  
"s/ Patricia S. Conner"  
Patricia S. Connor

PSC:ler  
Enclosure

cc: Honorable Joseph F. Anderson, Jr.  
Honorable George C. Kosko  
Mr. Samuel W. Phillips

APPENDIX A

## **APPENDIX B**

### **UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

Filed  
July 12 2005  
U.S. Court of Appeals  
Fourth Circuit

In the Matter of a  
  
Judicial Complaint No. 05-9024  
  
Under 28 U.S.C. § 351

#### **MEMORANDUM AND ORDER**

This complaint is brought pursuant to 28 U.S.C. §351(a), which provides an administrative remedy for “conduct prejudicial to the effective an expeditious administration of the business of the courts” and for judicial inability to “discharge all the duties of office by reason of mental or physical disability.”

Complainant brings this judicial misconduct complaint against the magistrate judge to whom complainant’s civil case was assigned for a report and recommendation. Complainant contends that the magistrate judge unfairly favored defense counsel over Him in the conduct of proceedings. Complainant alleges that the Magistrate judge was consistently lenient in the

## **APPENDIX B**

application of the procedural rules to defendant's counsel while holding Complainant, an African-American pro se litigant, to a more exacting standard. In support of this allegation, complainant sets forth seven items which defense counsel allegedly misstated or mischaracterized in defendant's statement of undisputed facts. Complainant contends that the magistrate judge should have sanctioned counsel for these misstatements or mischaracterizations. Complainant contends that the magistrate judge's failure to act demonstrates the respondent judge's bias. Complainant alleges that the magistrate judge invited defendant's counsel to file a motion for summary judgment. He states that the magistrate judge improperly treated his exhibits as pro se motions and ignored his repeated discovery requests. Complainant alleges that after the magistrate judge allowed Defendant's counsel to misstate the facts without penalty, the magistrate judge then relied upon some of defendant's misstatements in his resolution of the case. Complainant also contends that the magistrate judge ignored some of his materials and relied instead non disputed material produced by the defendant. Complainant identifies sixteen alleged errors committed by the magistrate judge in his conduct of proceedings and his preparation of the report and recommendation. Complainant's list Includes, inter alia, allegations that the magistrate judge drew legal conclusions from disputed material, usurped questions properly presented to a jury, relied upon partial truths presented by defendant, improperly aligned himself with defendant's position, misread and misapplied case law, made untrue and false statements in his report and recommendation, speculated on certain factual matters, referenced material never served upon complainant, and relied upon misinformation provided by defendant. Complainant has submitted an exhibit volume of materials in support of his judicial misconduct complaint. He contends these materials establish that the magistrate judge failed to

## APPENDIX B

perform his judicial duties in complainant's case impartially and diligently. Complainant's allegations concerning defendant's counsel are beyond the scope of the judicial misconduct statute and must be dismissed for failure to state a claim. 28 U.S.C. § 352(b) (1) (A) (i). See Rule 4(c) (1), Rules of the Judicial Council of the Fourth Circuit Governing Complaints of Judicial Misconduct and Disability. Complainant's claims of favoritism, bias and unequal treatment are not supported with any convincing evidence, and review of the district court record provides no support for complainant's allegations of biased or unfair treatment. Such conclusory allegations must be dismissed because they lack sufficient evidence to raise an inference that misconduct has occurred. 28 U.S.C. § 352 (b) (1) (A) (iii). See *In re Doe*, 2 F. 3d 308, 311 (8<sup>th</sup> Cir. Jud. Council 1993); Rule 4 (c) (3), Rules of the Judicial Council of the Fourth Circuit Governing Complaints of Judicial Misconduct and Disability.

The bulk of complainant's allegations are directly related to the merits of the magistrate judge's orders and rulings. Complainant's claims concerning the magistrate judge's alleged misstatement of facts, errors of law, use of disputed material, and abuse of discretion are all directly related to the merits of the magistrate judge's decisions and procedural rulings and are not the proper subject of a judicial complaint. Rather, such Claims must be raised through the usual judicial review Processes. 28 U.S.C. § 352 (b) (1) (A) (ii); Rule 4 (c) (2). Rules of the Judicial Council of the Fourth Circuit Governing Complaints of Judicial Misconduct and Disability; *In re Charge of Judicial Misconduct*, 685 F.2d 1226 (9<sup>th</sup> Cir. Jud. Council 1982). Complainant has raised and preserved these claims, both before the district judge who reviewed and

## APPENDIX B



adopted the magistrate Judge's report and recommendation and in a pending appeal currently before this Court from the district court's grant of summary judgment.

Accordingly, this complaint is dismissed pursuant to 28 U.S.C. § 352 (b) (1) (A) (i) for failure to state a claim, (A) (ii) as directly related to the merits of a judicial proceeding, and (iii) as lacking sufficient evidence to raise an inference that misconduct has occurred.

IT IS SO ORDERED.

" s/ William W. Wilkins"

William W. Wilkins

Chief Judge

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

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## APPENDIX C

### UNITED STATES DISTRICT COURT DISTRICT OF SOUTH CAROLINA AIKEN DIVISION

#### JUDGEMENT IN A CIVIL CASE

Christopher Lawrence

vs

Westinghouse Savannah River Company, Inc

Case Number 1:03-484-RBH-GCK

[X] **Decision by Court.** This action came to hearing before the Court, the Honorable R. Bryan Harwell, US District Judge, presiding. The Court having adopted the Report and Recommendation of US Magistrate Judge George C. Kosko, granting the defendant's motion for summary judgment,

**IT IS ORDERED AND ADJUDGED** that summary judgment is entered in favor of the defendant, Westinghouse Savannah River Company, Inc. The plaintiff, Christopher Lawrence, shall take nothing of the defendant, Westinghouse Savannah River Company, Inc, and this action is dismissed with prejudice.

LARRY W. PROPES, Clerk

By: s/Charles L. Bruorton  
Deputy Clerk

April 4, 2005

APPENDIX C

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
AIKEN DIVISION**

Christopher Lawrence, Plaintiff

v

Westinghouse Savannah River Company, Inc., Defendant

Civil Action No.:1:03-484-27

**ORDER GRANTING  
SUMMARY JUDGMENT**

**Procedural History**

In this matter, the plaintiff, a resident of Georgia and Illinois acting *pro se*, filed an action in the Court of Common Pleas, Aiken County, South Carolina, alleging breach of contract and retaliatory discharge stemming from his termination from employment with the defendant. The defendant removed the action to this court on February 12, 2003 on the basis of diversity jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1441 and supplemental jurisdiction pursuant to 28 U.S.C. § 1391. Defendant filed its motion for summary judgment and supporting memorandum of January 5, 2004.

This matter is now before the undersigned for review of the Report and Recommendation ("the Report") filed by United States Magistrate Judge George C. Kosko to whom this case had previously been assigned pursuant to 28 U.S.C. § 636 and Local Rule 73.02(B)(2)(g). In his Report, Magistrate Judge Kosko carefully considers the issues and recommends that the defendant's motion for summary

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judgment be granted. Plaintiff filed objections to the Report on August 5, 2004. Defendant filed a reply on August 17, 2004. Plaintiff filed a response on August 25, 2004, as well as two letters filed September 8, 2004 and November 15, 2004.

In his objections the plaintiff accuses the Magistrate Judge of being partisan and an advocate for the defendant. The plaintiff disputes many of the factual allegations in the Report and asserts that it is an issue for the jury as to what documents are relevant to his employment relationship with the defendant.

In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections.... The Court is not bound by the recommendation of the Magistrate judge but, instead, retains responsibility for the final determination. The Court is not required to review, under a *de novo* or any other standard, the factual report and recommendation to which no objections are addressed. While the level of Scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Courts is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

*Wallace v. Housing Auth. of the City of Columbia*, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

### **Facts**

The court agrees with the factual and procedural background as set forth by the Magistrate Judge in his Report and Recommendation. The court therefore adopts the Magistrate Judges's version of the facts in this case to the extent such facts are not specifically included herein.

## **APPENDIX C**

The plaintiff was hired by the defendant Westinghouse Savannah River Company, LLC ("Westinghouse") in 1989. Westinghouse assumed the interests of Dupont Corporation and took over management of the Savannah River Site in 1989. The defendant operates the Savannah River Site under a contract with the United States Department of Energy ("DOE").

The defendant's contract with the DOE requires the defendant to establish local policies, including personnel policies. The defendant has a personnel policy manual called the 5B Manual.

The defendant uses a system of "contacts" to document some interactions between supervisors and subordinates. These contacts can include disciplinary contacts and can be used to document something positive an employee has done or to caution an employee about a management concern. Other types of disciplinary action used by the defendant include suspension, probation, final employee commitment, and termination.

On August 30, 2001, the defendant terminated the plaintiff due to plaintiff's "excessive absenteeism, failure to correct excessive absenteeism, insubordination, and failure to follow policies and instructions given by management in connection with attempts by management to correct his absenteeism."

(Defendant's Responses to LCR 26.03 at ¶ 1). The effective date of plaintiff's termination was August 31, 2001. On September 1, 2001, plaintiff was escorted out of defendant's site by security personnel.

On July 19, 2002, plaintiff filed a charge of discrimination with the EEOC. On September 13, 2002, the EEOC issued a

#### **APPENDIX C**

Notice of Right to Sue Letter. Subsequently, plaintiff the instant action in which he alleges two (2) causes of action: "Count (1)-Wrongful Termination," in which he alleges a breach of policies or procedures in the 5B manual, and "Count (2)- Retaliatory Discharge."

Defendant filed its motion for summary judgment pursuant to Rule 56, Fed. R. Civ. P arguing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law.

### **Legal Standard for Summary Judgment**

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P.56(c). The moving party has the burden of proving that judgment on the pleading is appropriate. Once the moving party makes the showing, however, the opposing party must respond to the motion with "specific facts showing there is a genuine issue for trial." Fed.R.Civ.P.56(e).

When no genuine issue of any material fact exists, summary judgment is appropriate. *Shealy v. Winston*, 929 F.2d 1009,1011 (4<sup>th</sup> Cir. 1991). The facts and inferences to be drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Id.* However, "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

In this case, defendant "bears the initial burden of point to the absence of a genuine issue of material fact." *Temkin v.*

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*Frederick County Commrs*, 845 F.2d 716, 718 (4<sup>th</sup> Cir. 1991) (citing *Celotex Corp v. Catrett*, 477 U.S. 317,322, (1986). If defendant carries this burden, “the burden then shifts to the non-moving party to come forward with fact sufficient to create a triable issue of fact.” *Id.* at 718-19 (citing *Anderson*, 477 U.S. at 247-48).

Moreover, “once the moving party has met its burden, the nonmoving party must come forward with some evidence beyond the mere allegations contained in the pleadings to show there is a genuine issue for trial.” *Baber v. Hosp. Corp. of Am.*, 977 F.2d 872, 874-75 (4<sup>th</sup> Cir. 1992). The nonmoving party may not rely on beliefs, conjecture, speculation, of conclusory allegations to defeat a motion for summary judgment. *Id.* and *Doyle v. Sentry, Inc.*, 877 F. Supp. 1002, 1005 (E.D. Va.1995). Rather, the nonmoving party is required to submit evidence of specific facts by way of affidavits (see Fed R. Civ. P.56(c), depositions, interrogatories, or admissions to demonstrate the existence of a genuine and material factual issue for trial. *Baber*, 977 F.2d 872, citing *Celotex Corp.*, *supra*. Moreover, the nonmovant’s proof must meet “the substantive evidentiary standard of proof that would apply at a trial on the merits.” *Mitchell v. Data Gen. Corp.*, 12 F.3d 1310, 1316 (4<sup>th</sup> Cir.1993); *Deleon v. St. Joseph Hosp., Inc.*, 871 F.2d 1229, 1223 n. 7 (4<sup>th</sup> Cir. 1989). Unsupported hearsay evidence is insufficient to overcome a motion for summary judgment. *Martin v. John W. Stone Oil Distrib., Inc.*, 819 F.2d 547 (5<sup>th</sup> Cir.1987); *Evans v. Techs. Applications & Servs. Co.*, 875 F. Supp.1115 (D.Md.1995).

### **Factual Allegations**

The plaintiff alleges that the Magistrate Judge improperly included disputed material from the defendant’s summary judgment motion into the Report. On June 14, 2004, the Magsitrate Judge held a status conference in this case and

### **APPENDIX C**

ordered the plaintiff and the defendant to jointly prepare a statement of uncontested facts. The parties agreed to a "Statement of Uncontested Facts" which was filed on June 18, 2004. Also on that date, the plaintiff filed a Notice of Disputed Facts and the defendant filed its Notice of Contested Facts. What the plaintiff does not appear to realize is that the Magistrate Judge could determine that a fact was uncontested despite Lawrence's refusal to include that fact in the statement of uncontested facts if, for example, the fact was admitted plaintiff in his deposition.

The plaintiff also complains that his early employment history was recited in the Report. This material was nothing more than background to help the reader understand the events that led to the plaintiff's discharge. Plaintiff appears to claim personal bias and animosity on the part of defendant's management, and particularly Supervisor Thigpen, against the plaintiff. He further appears to maintain inaccuracy in the background history, reasons, or facts that led up to his eventual termination. Even assuming there was personal bias by Thigpen or others, and assuming inaccuracy in the reasons given for the termination, the question is: Was the at-will employment relationship of the parties altered or modified by an employee handbook under South Carolina common law?

### **Breach of Contract**

The plaintiff contends that the 5B Manual, the DOE agreement with defendant, and other parts of the defendant's Operating and Procedures Manuals are part of the employment relationship and that he is entitled to have a jury determine what documents are relevant to the employment relationship. While plaintiff alleges the entire "5B Manual policies and practices, 8Q Manual policies and practices, 5Q Manual, policies and practices, Rules of Conduct and Department of

### **APPENDIX C**

Energy Contract No. DE-AC09-96SR18500 set forth and gives rise to a binding obligation of performance that by the very nature establishes a unilateral employment contract" (Plaintiff's Response to Defendant's Position Regarding Plaintiff's Objections p. 2), he testified in his deposition that he specifically relied only on provision 2.9 of the Manual to establish his breach of contract claim. See Deposition of Christopher Lawrence pp132-139.

The general rule in South Carolina is that employment is "at will," and employees or their employers may end the employment relationship at any time, for any reason, or for no reason at all. *Small v. Springs Industries*, 388 S.E.2d 808, 810 (S.C.1990) (*Small I*). The South Carolina Supreme Court has recognized that an employee handbook can modify an at-will employment relationship. *Small v. Springs Industries*, 357 S.E. 452(1987) (*Small II*). This exception to the at-will employment rule is based on unilateral contract theory. *Id.* In order for a handbook promise to alter the at-will employment relationship, a handbook promise must not only exist, but an employee must know that it exists. *Small I*, 357 S.E. 2d at 454. However, in *Small I*, the handbook and related bulletin provided for a four-step disciplinary process given before discharge. *Id.* at 453.

Therefore, it would appear that the plaintiff must direct the court to some particular provision he claims was violated that limited the employer's right to discharge him.

Additionally, the handbook promise must restrict the right of an employer to discharge. See *Bookman v. Shakespeare*, 444 S.E.2d 183 (S.C.Ct. App. 1994). In *Prescott v. Farmers Telephone Co-op., Inc.*, 491 S.E.2d 698, 702 (S.C.Ct. App.1997) (rev'd on other grounds 516 S.E.2d 923 (S.C.1999)), the court held that since the plaintiff could not

## APPENDIX C

direct the court to any language in the handbook promising pre-termination warnings or other procedures there was no limit to the employer's right to discharge and, therefore, no modification of the employee's at-will employment. In that case, the handbook listed types of conduct that could result in discipline and stated that employees could have the termination decision reviewed by higher levels of management. The court held that the listing of conduct that could result in discipline, without promising a certain procedure before discipline, did not limit the right to discharge. *See also, Epps v. Clarendon County*, 405 S.E. 2d 386 (S.C.1991).

In his objections the plaintiff has failed to allege a handbook policy or promise that he is entitled to something related to discharge. The plaintiff complains that the defendant's doctor and his supervisors who reviewed his medical absences were biased and they unfairly tried to force him back to work during a medical-related absence. This argument is irrelevant, because Lawrence is an at-will employee, unless he can show a contractual promise not to terminate him if he had an excuse for not returning to work or a promise not to terminate him if his supervisor did not like him or was biased against him. Plaintiff has presented no evidence of such promise so there is no relevant question of fact.

Similarly, the plaintiff argues that various post-termination procedures described in policy 2.9 were violated.<sup>1</sup> For example, he asserts that he was denied a post-termination exit interview and that his discharge was not approved by the president of Westinghouse. However, as the Magistrate Judge pointed out in his Report, the exit interview and the approval were post-termination procedures that did not restrict

## APPENDIX C

the defendant's right to discharge. The plaintiff argues that the president of Westinghouse did not approve his termination because the president did not sign the termination document. Westinghouse submitted an affidavit that its president did approve the termination through his designee. Lawrence claims this affidavit is false, but offers no evidence of falsity beyond a blanket allegation. Regardless, the president's approval, or that of his designee, is a post-termination procedure rather than a pre-termination procedure. See *Prescott*, 491 S.E. 2d at 702-703.

For the first time in his Objections, Lawrence refers to a policy not mentioned before, policy 2.7. Plaintiff now claims that this policy has been violated, but does not explain how it has been violated. Lawrence was questioned at length about which policies he though formed a contract and which ones he thought were not followed. Other than policy 2.9, Lawrence testified in his deposition that he did not know of any other policies that were violated. Lawrence cannot not create an issue of fact by contradicting his own sworn testimony.

See, e.g., *Hernandez v. Trawler Miss Vertie Mae, Inc.*, 187 F. 3d 432, 438 (4thCir.1999); *Barwick v. Celotex Corp.*, 736F.2d 946, 960 (4thCir. 1984).

### **Retaliatory Discharge**

In his objections, the plaintiff states: "The Court characterizes this claim as a retaliation claim which is not what the Plaintiff argues; he does not assert that he was fired because of his race or because he was a 'whistleblower' or because he was engaging in some particular activity." (Objections p. 33). The Court therefore assumes plaintiff is

## **APPENDIX C**

not asserting or is abandoning this claim, but even if the plaintiff is not asserting or is abandoning his retaliatory discharge claim, this court finds that the plaintiff cannot establish the elements of a retaliation claim.

A Title VII retaliation claim is properly analyzed under the framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Under this framework, a plaintiff must set forth a *prima facie* case of intentional discrimination. To establish a *prima facie* case for retaliation, a plaintiff must show (1) that he engaged in a protected activity, (2) defendant took adverse employment action against him, and (3) a causal connection existed between the protected activity and the adverse action. *Matvia v. Bald Head Island Mgmt., Inc.*, 259 F. 3d 261, 271 (4thCir.2001); *Ross v. Commun. Satellite Group*, 759 F. 2d 355, 365 (4thCir.1985). Once the plaintiff has established a *prima facie* case the burden shifts to the defendant to produce a legitimate, nondiscriminatory reason for the termination. *Texas Dept. of Community Affairs*, 450 U.S. at 254. Once the defendant has satisfied that burden, the burden shifts back to the plaintiff to demonstrate by a preponderance of the evidence that the reasons stated by the defendant were not its true reasons, but were pretext for discrimination. *Reeves*, 530 U.S. at 143.

### ***Prima Facie Case***

In the instant case plaintiff cannot establish a *prima facie* case because he cannot satisfy the first requirement. The plaintiff describes himself as a “well educated, outspoken African American” who “often spoke-out [sic] on issues” and “advised other employees [of the defendant] of their rights and obligations under the Procedural Manual.” (Complaint at ¶¶ 17-19). Plaintiff asserts that the retaliatory termination was a

## **APPENDIX C**



result of his exercise of “[t]he right to speak out” and “[t]he right to own your own business.” (Complaint at ¶¶ 26-27).

Under the controlling statutory language, protected activities fall into either the opposition clause or the participation clause. See *Kubicko v. Ogden Logistics Services*, 181 F. 3d 544, 551 (4<sup>th</sup> Cir. 1999). (making it unlawful to discriminate against an employee because he opposed illegal employment practices or because he made a charge). The Fourth Circuit Court of Appeals has said that “[o]pposition activity encompasses utilizing informal grievance procedures as well as staging informal protests and voicing one’s opinions in order to bring attention to an employer’s discriminatory activities.” *Id.* In the present case, plaintiff cannot satisfy the first prong of his retaliation claim because he cannot show that he engaged in any statutorily protected oppositional or participatory activity.

#### **Legitimate, Nondiscriminatory Reason for Termination**

As discussed more fully above and in the Report, even if the plaintiff could establish a *prima facie* case, the defendant has articulated a nondiscriminatory reason for terminating the employee and the plaintiff has failed to establish that the reason is false and pretextual.

To the extent the plaintiff is not claiming a Title VII retaliatory discharge, and instead the plaintiff is attempting to claim retaliatory discharge under South Carolina common or statutory law, his claim also fails. While South Carolina common law recognizes that an at-will employee cannot be discharged for a reason that violates public policy, *Ludwick v. This Minute of Carolina, Inc.*, 337 S.E. 2d 213 (1985); no allegation of a violation by the employer of some clear mandate of public policy is made by the plaintiff.

#### **APPENDIX C**

"The 'public policy' violation requirement by the doctrine is not an open-ended concept but is restricted to violations which contravene the clear mandate of public policy 'within the penal sphere.'" *Merck v. Advance Drainage Systems, Inc.*, 921 F. 2d 549 (4thCir. 1990) (citing to *Ludwick*).

### **Conclusion**

I find as a matter of law that there are no issues of material fact and defendant is entitled to summary judgment as to plaintiff's claims.

For the foregoing reasons, the undersigned adopts and incorporates the Report and Recommendation of the Magistrate Judge and **Grants** the defendant's motion for summary judgment.

**AND IT IS SO ORDERED**

s/ R. Bryan Harwell

R. Bryan Harwell

March 31, 2005

United States District Court Judge

Florence, South Carolina

**APPENDIX C**

**In The District Court of the United States  
For the District of South Carolina  
AIKEN DIVISION**

LARRY W. PEOPLES, CLERK  
CHARLESTON, SC

FILED  
JUL 19 2004

ENTERED  
07-19-04

Civil Action  
No. 1:03-484-26BG

CHRISTOPHER LAWRENCE, Plaintiff,

v

WESTINGHOUSE SAVANNAH RIVER COMPANY LLC  
Defendant

REPORT AND RECOMMENDATION  
OF THE MAGISTRATE JUDGE

## **I. INTRODUCTION**

The Plaintiff, Christopher Lawrence ("Plaintiff or "Lawrence"), a resident of Georgia and Illinois, acting pro se, filed this action in Court of Common Pleas for Aiken County on January 14, 2003 against Westinghouse Savannah River Company LLC ("Defendant") for breach of contract and retaliatory discharge stemming from his termination from employment with the Defendant.<sup>1</sup>

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<sup>1</sup> See Complaint, attached to Notice of Removal. [1-1] Although the pro se Complaint enumerated the causes of action as (1) wrongful termination and (2) retaliatory discharge, contained within the first cause of action was an action which this Court reads as one for breach of contract based upon the Defendant's pro se Complaint. On July 19, 2002, Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC"), alleging that he was "singled out and retaliated against because [he is] an outspoken person" and is Black, and the Defendant's actions were in violation of his rights under Title VII of the Civil Rights Act of 1964, as amended. See Defendant's Motion for Summary Judgment at Exhibit 37. Despite this statement, Plaintiff has represented to the Court that he is not alleging that the instant action is based on racial discrimination. On June 23, 2004, the undersigned issued an Order to Plaintiff posing the following question: "Is the plaintiff claiming an action based on racial discrimination?" [66-1] On June 30, 2004, the Plaintiff returned the Order, stating that he was not claiming that his action was based on racial discrimination. [68-1] This was a crucial issue to the case, as it was unclear whether Plaintiff was pursuing a claim under the Civil Rights Act or under state laws. If Plaintiff were pursuing an action under the Civil Rights Act, such action would have been barred by the applicable statute of limitations. Under Title VII of the Civil Rights Act of 1964, a prerequisite to filing a lawsuit claiming racial discrimination is to file a charge of discrimination with the EEOC or the state agency equivalent. This charge must be filed within 300 days of the alleged discriminatory act. 42 U.S.C. § 2000e-5(e)(1). Following the EEOC's conclusion of its investigation, a lawsuit must be filed within 90 days of the receipt of an EEOC right to sue letter. 42 U.S.C. § 2000e-5(f)(1). Plaintiff was terminated on August 29, 2001. Plaintiff filed his charge of discrimination on July 19, 2002, approximately 350 days after his termination and accordingly, his charge was not timely filed.

The EEOC issued a notice of right to sue on September 13, 2002. Plaintiff testified that he received the notice in September. (See Defendant's Motion for Summary Judgment at Tab 1, Lawrence Dep. at p. 147). The EEOC had issued its Dismissal and Notice of Rights on September 13, 2002, (see Defendant's Motion for

The Defendant timely removed this action to the United States District Court for the District of South Carolina.<sup>2</sup> [1-1] This Court has diversity jurisdiction of this matter pursuant to 28 U.S.C. §§ 1332 and 1441, and supplemental jurisdiction pursuant to 28 U.S.C. § 1367. Venue is proper because the events at issue occurred in this District and Division. 28 U.S.C. § 1391.

Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(e), D.S.C., the undersigned United States Magistrate Judge is authorized to review all pretrial matters involving litigation by individuals proceeding pro se and submit findings and recommendations to the District Court.

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Summary Judgment at Tab 36) which stated: "You may file a lawsuit against the respondents under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this Notice; otherwise, your right to sue based on this charge will be lost." (Emphasis and capitalization in the original). In the present case, Plaintiff filed this action on January 14, 2003 in State Court; which is, by this Court's count, one hundred twenty-three days after the EEOC issued the Dismissal and Notice of Rights and therefore well after the expiration of the ninety-day statute of limitations contained in the EEOC's Dismissal and Notice of Rights. Accordingly, had Plaintiff pursued his lawsuit under the theory articulated in the Charge of Discrimination, his suit based upon those grounds would not have been timely filed. See 42 U.S.C. § 2000e.

2 Defendant's Notice of Removal construed the Complaint as alleging "a claim under Title VII of the Civil Rights Act of 1964." [1-1] Nevertheless, as discussed supra in n.1, the Plaintiff subsequently advised the Court that he does not claim an action based on racial discrimination. [68-1]

## **II. PRO SE COMPLAINT**

Plaintiff is a pro se litigant, and thus his pleadings are accorded liberal construction. Hughes v. Rowe, 449 U.S. 5, 8 (1980), per curiam; Estelle v. Gamble, 429 U.S. 97 (1976); Haines v. Kerner, 404 U.S. 519 (1972); Loe v. Armistead, 582 F.2d 1291 (4<sup>th</sup> Cir. 1978); Gordon v. Leeke, 574 F.2d 1147 (4<sup>th</sup> Cir. 1978).

The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so, but a district court may not rewrite a petition to include claims that were never presented. Barnett v. Hargett, 174 F.3d 1128 (10<sup>th</sup> Cir. 1999). Likewise, a court may not construct the plaintiffs legal arguments for him (Small v. Endicott, 998 F.2d 411 (7<sup>TH</sup> Cir. 1993)) or "conjure up questions never squarely presented" to the court. Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4<sup>th</sup> Cir. 1985), cert. denied, 475 U.S. 1088 (1986).

## **III. PROCEDURAL HISTORY**

After the Defendant removed this case to federal court, the parties engaged in extensive discovery. After several hearings regarding discovery matters, on January 5, 2004 the Defendant filed a Motion for Summary Judgment and a Memorandum in Support thereof ("Defendant's Motion"). [40-1; 41-1] Thereafter, Plaintiff filed a Response to Defendant's Motion, as well as several supplemental amendments to his Response. [44-1; 45-1; 47-1; 48-1] The Defendant opposed these supplemental responses to summary judgment and also filed a reply. [49-1; 50-1] On March 2, 2004, the Plaintiff responded to Defendant's pleading. [52-1] Subsequently, Plaintiff asked leave of the Court to file additional material in opposition to Defendant's Motion. [55-1]

This case was mediated unsuccessfully in April 2004. On May 7, 2004 Plaintiff filed a "Dismissal without Prejudice" [56-1] which this Court construed as a Motion to Dismiss Without Prejudice pursuant to Fed.R.Civ.P. 41(a)(1). The Defendant



responded on May 17, 2004, asserting that it did not consent to dismissal of the action. [57-1] On May 25, 2004 the Plaintiff filed a "Supplemental Brief in Opposition to Defendant's Motion for Summary Judgement" which set forth additional arguments in opposition to Defendant's Motion. In that document, Plaintiff withdrew his motion for a voluntary dismissal, conceding that his pleading was in violation of Rule 41 of the Federal Rules of Civil Procedure. [58-1]

On June 14, 2004, the undersigned United States Magistrate Judge held a status conference in this case and ordered the Plaintiff and the Defendant to jointly prepare a statement on uncontested facts. The parties participated in the composition of a "Statement of Uncontested Facts" which was filed on June 18, 2004. [64-1] Also on that date, the Plaintiff filed a Notice of Disputed Facts [62-1] and the Defendant filed its Notice of Contested Facts. [63-1] The Defendant also filed a reply to Plaintiffs Notice of Disputed Facts. [65-1]

On June 23, 2004, the undersigned issued an Order directing the Plaintiff to answer one question, viz., "Is the Plaintiff claiming an action based on racial discrimination?" [66-1] On June 30, 2004, the Plaintiff answered "No" to this question. [68-1] On July 2, the Plaintiff filed another memorandum in opposition to Defendant's Motion, [69-1] and the Defendant filed its reply on July 7. [70-1] As the Defendant has moved for summary judgment as to all claims, and the pro se Plaintiff has filed a number of responses, the issues have been thoroughly briefed, and the matter is ripe for a Report and Recommendation.

#### **IV. FACTUAL BACKGROUND**

The facts, either uncontested or taken in the light most favorable to the Plaintiff as the non-moving party, and all reasonable inferences therefrom, to the extent supported by the record, are as follows:

Plaintiff was first employed by Defendant in 1989,<sup>3</sup> at which time he was given two years' service credit for his prior employment with Morrison-Knudsen.<sup>4</sup> Defendant assumed the

interests of Dupont Corporation when Defendant took over management of the Savannah River Site (the "SRS") in 1989.<sup>5</sup>

The Defendant operates the SRS under a contract with the United States Department of Energy (the "DOE").<sup>6</sup>

The Defendant's contract with the DOE requires Defendant to establish local policies, including personnel policies.<sup>7</sup> The Defendant has a personnel policy manual called the 5B manual.<sup>8</sup> The Defendant uses a system of "contacts" to document some interactions between supervisors and subordinates. These can include disciplinary contacts and can be used to document something positive the employee did or to caution an employee about a management concern.<sup>9</sup> Other types of disciplinary action used by Defendant include suspension, probation, final employee commitment, and termination.<sup>10</sup>

In 1988, Plaintiff was absent from work for a "bunionectomy." He informed his supervisor he would be out of work for eight (8) weeks.<sup>12</sup> The Defendant's medical department felt that eight weeks was excessive and advised Plaintiff to bring in a doctor's note.<sup>13</sup> The note Plaintiff brought in contained work restrictions but did not address the issue of return to work.<sup>14</sup>

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3 See Statement of Uncontested Facts [64-1] (hereinafter "Facts") at ¶ 1.

4 See Facts at ¶ 2.

5 See Facts at ¶ 3.

6 See Facts at ¶ 4.

7 See Facts at ¶ 6.

8 See Facts at ¶ 6. The only portion of the manual that has been entered into evidence is Policy 2.9, which is set forth in Defendant's Motion for Summary Judgment [40-1] at Tab 38.

9 See Facts at ¶ 7.

10 See Facts at ¶ 8.

11 See Facts at ¶ 9.

12 See Facts at ¶ 10.

13 See Facts at ¶ 11.

14 See Facts at ¶ 12.

Plaintiff also asserted he should not be expected to come to work because he could not drive a manual transmission in a car<sup>15</sup> In 1989, Plaintiff was warned for failing to let his supervisors know he would be absent from work.<sup>16</sup> Also in 1989, Plaintiffs performance appraisal warned him that his attendance needed to improve.<sup>17</sup>

In 1991, Plaintiff was warned that further absences would result in discipline and at the end of 1991 he was warned that his absences were excessive.<sup>18</sup>

In June 1992, Plaintiff was warned that his attendance was below expectations, and on September 10, 1992 Plaintiff received two (2) Informative written contacts: one related to Plaintiffs failure to return to work following funeral leave, and the other related to the Defendant's development of an attendance program to assist Plaintiff in achieving the departmental goal of 97% attendance (not including vacation and holidays). In addition, Plaintiff was required to call his supervisor to report any unscheduled absence.<sup>19</sup> About a week later, on September 15, 1992, Plaintiff was issued a Corrective contact which stated in part that he had to meet or exceed the departmental goal of 97% attendance, and that a review of his performance and absenteeism would be conducted monthly for the next six months.<sup>20</sup>

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<sup>15</sup> See Facts at ¶ 13. Plaintiff has submitted documents indicating that Plaintiff owns vehicles with manual transmissions, that he had a "full cast on his driving foot" and he had informed the Defendant that he would be unable to go to work "unless they [Defendant] send somebody out here to pick me up[.]"Plaintiff See Plaintiffs Response to Summary Statement filed by [Defendant's] Counsel, Book One, Dated January 19, 2003 at Tab 41, page 2.

<sup>16</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 4.

<sup>17</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 5.

<sup>18</sup> See Defendant's Motion for Summary Judgment [40-1] at Tabs 6, 7.

<sup>19</sup> See Defendant's Motion for Summary Judgment [40-1] at Tabs 9-11.

<sup>20</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab

In 1997, Plaintiff's performance review indicated that he had exceeded his allowed absences for that year.<sup>21</sup> In 1998, Plaintiff missed about 209 hours of work and was informed of Defendant's concerns about his attendance in his annual performance review."

In February 2000, Plaintiff's department suffered a reduction in force. Because of his seniority, Plaintiff was allowed to transfer to another division.<sup>23</sup> On April 6, 2000 Plaintiff was given a warning about his attendance because Plaintiff had been late three consecutive days and had taken six short vacations within the first twelve (12) days in his new division.<sup>24</sup> By April 10, 2000, Plaintiff had exceeded the limit set by his managers on the number of absences he was allowed (40 hours not including vacation and holidays). Plaintiff was warned that further unexcused absences would result in discipline and future absences were to be limited to genuine emergencies.<sup>25</sup>

On May 10, 2000 the Defendant issued another contact which informed him that his attendance was unacceptable and that his future attendance would be subject to biweekly monitoring.<sup>26</sup>

On June 2, 2000 Plaintiff requested that he be allowed to take June 5 off due to an emergency at a factory in California that supplied ties for his local business. Defendant's management instructed all of its supervisors that they were not to give Plaintiff any more excused time off, but that the absence would be unexcused without pay.<sup>27</sup>

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21 See Defendant's Motion for Summary Judgment [40-1] at Tab 17.

22 See Defendant's Motion for Summary Judgment [40-1] at Tab 20.

23 Facts at ¶ 14.

24 See Defendant's Motion for Summary Judgment [40-1] at Tab 21.

25 See Defendant's Motion for Summary Judgment [40-1] at Tab 22.

26 See Defendant's Motion for Summary Judgment [40-1] at Tab 25.

27 See Defendant's Motion for Summary Judgment [40-1] at Tab 26.

On June 7, 2000, Plaintiff became involved in a verbal confrontation with his supervisor, Seaborne Warren, which resulted in Plaintiff being warned that he should remain civil to his supervisors.<sup>28</sup> On July 28, 2000, Plaintiff was absent from work to get blood work in preparation for a second bunionectomy.<sup>29</sup> When he returned to work that day, Plaintiff was excused from work because he said he was being affected by medication.<sup>30</sup> Plaintiff went out on medical leave related to his second bunionectomy on August 1, and admitted that the Defendant did not know how long Plaintiff would be out of work.<sup>31</sup> After his surgery Plaintiff did not call anyone at the Defendant because Plaintiff believed "there's nowhere in the policy that says for me to make notification every week or every day or every so often to medical."<sup>32</sup> Defendant's management, and Defendant's physician, Dr. Botnick, documented that they were concerned that Plaintiff's outside business was interfering with his employment at Defendant's facility. Dr. Botnick made comments about this in Plaintiff's employment file and medical file.<sup>33</sup> Dr. Botnick's position regarding Plaintiff's attendance was negative."<sup>34</sup>

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<sup>28</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 27.

<sup>29</sup> Facts at ¶ 5.

<sup>30</sup> Facts at ¶ 16.

<sup>31</sup> See Defendant's Motion for Summary Judgment [40-11] at Tab 1, Plaintiff's Dep. at p. 85.

<sup>32</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 1, Plaintiff's Dep. at p. 86.

<sup>33</sup> Facts at ¶ 17.

<sup>34</sup> The word "skeptical" had been used in the agreed-upon set of Facts (at ¶ 8) which had been typed and filed by the Defendant. Thereafter, the Plaintiff objected to this word on the grounds that it was incorrect. [69-1] Defendant reviewed the tape of the hearing on June 18 and stated that it had inadvertently used the incorrect word and in fact, the word should be "negative". [70-1]

The week following Plaintiffs surgery, Dr. Botnick began calling Plaintiff to obtain information about Plaintiffs leave.<sup>35</sup> Dr. Botnick felt that three weeks' leave for the operation should have been more than sufficient for Plaintiff to recover.<sup>36</sup> Dr. Botnick located Plaintiffs physician and discovered that Plaintiff was going to be evaluated on September 7, 2000.<sup>37</sup> On September 11, 2000 Plaintiffs supervisor, Ralph Thigpen ("Thigpen") called Plaintiff at his home, at his mother's home, and his ex-wife's home to obtain information about his leave.<sup>38</sup> Plaintiff admitted that he was refusing to answer telephone calls from Thigpen, Dr. Botnick, and others because he did not want to talk to them<sup>39</sup> and that they were calling him "constantly".<sup>40</sup> When Thigpen reached Plaintiff, Plaintiff told Thigpen that Thigpen was not a doctor and could not instruct him to return to work without talking to his doctor.<sup>41</sup> Sometime after September 11, the Defendant received a note from Plaintiffs doctor which only listed working restrictions, but did not address whether or not Plaintiff could return to work.<sup>42</sup> It appears to the Court that a copy of this note was faxed from Plaintiffs doctor's office to the Defendant on September 12, 2000.<sup>43</sup> Dr. Botnick left several messages to the effect that Defendant expected Plaintiff to be on work on September 11, 2000.<sup>44</sup> However, Plaintiff testified that his physician had not released him for work at that time.<sup>45</sup>

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<sup>35</sup> Facts at ¶ 19.

<sup>36</sup> Facts at ¶ 20.

<sup>37</sup> Facts at ¶ 21.

<sup>38</sup> Facts at ¶ 22; see also Defendant's Motion for Summary Judgment [40-1] at Tab 28, Thigpen's notes.

<sup>39</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 1, Plaintiff's Dep. at pp. 93, 106.

<sup>40</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 1, Plaintiff's Dep. at pp. 93.

<sup>41</sup> Facts at ¶ 23.

<sup>42</sup> Facts at ¶ 24, 26.

<sup>43</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 29.

<sup>44</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 30, p. 782.

<sup>45</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 1, p. 93.



Plaintiff's supervisor, Thigpen, also called Plaintiffs telephone numbers and left messages that Plaintiff was expected at work on September 11.<sup>46</sup>

On September 12, Plaintiff did not return to work.<sup>47</sup> Also on that date, Dr. Botnick spoke with Plaintiff; Plaintiff said he had not been released by his physician.<sup>48</sup>

Thigpen spoke with Plaintiff on the telephone that day and left messages for him to come to work.<sup>49</sup> Plaintiff told his supervisor, Thigpen, that he had a medical excuse until October 3.<sup>50</sup> Defendant's management wanted Defendant's human resources department to intervene at this point because management said it had pushed the issue as far as it could without guidance.<sup>51</sup> Plaintiff did not return to work until September 22, 2000<sup>52</sup> although Plaintiff testified that his physician's excuse permitted him to be out of work until October 1.<sup>53</sup> (However, it appears from the record that the only doctor's note the Defendant received was the note dated September 11, 2000.<sup>54</sup>) While Plaintiff was at work that day, his supervisor found Plaintiff sleeping. Plaintiff stated he was asleep due to medication.<sup>55</sup> On September 27, 2000, a committee consisting of eight (8) of Defendant's employees, including Dr. Botnick, Lorrie Lott (the Defendant's Principle Human Resources Representative), and Thigpen, met and recommended that Plaintiff be put on probation.<sup>56</sup> On September 29, 2000 Plaintiff was placed on probation.<sup>57</sup>

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<sup>46</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 28.

<sup>47</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 28.

<sup>48</sup> Facts at H 25.

<sup>49</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 28.

<sup>50</sup> Facts at ¶ 27.

<sup>51</sup> Facts at ¶ 28.

<sup>52</sup> Facts at ¶ 29.

<sup>53</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 1, Plaintiffs

<sup>54</sup> Dep. at pp. 98-99.

<sup>55</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 29.

<sup>56</sup> Facts at ¶ 30.

<sup>57</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 33, p. 1.

The Defendant listed the following reasons for probation:

You continue to miss work with excuses either missing or provided with little notice. Your managers and co workers cannot execute work when team members fail to report to be at work, [sic] This behavior is contrary to [Defendant's] Rules of Conduct (Unauthorized absences and excessive excused or unexcused absences from your work assignment). Previous Informative and Corrective Contacts given to you during your SRS career have failed to improve your behavior in this regard.

Your behavior has also resulted in failure to attain satisfactory performance toward a Production Operator Qualifications. This has led to a second violation of the [Defendant's] Rules of Conduct in that your job performance is unsatisfactory.

You have repeatedly failed to meet [Defendant's] guidelines (5B Manual section 2.12.7.A) pertaining to requests for time off.

When management has contacted you to ascertain your condition and intentions you have been insubordinate in refusing to comply with their reasonable request [sic] and instructions concerning your employment status. This insubordination violates the [Defendant's] Rules of Conduct.

You have not met your responsibilities in keeping Site Medical and your management informed as to medical conditions as required by 5B Manual 2.24.<sup>58</sup>

Dr. Botnick did not review, at any time, Lawrence's personal physician's medical file, however, he did call Plaintiffs personal physician on several occasions.<sup>59</sup>

Plaintiff never gave Dr. Botnick his personal medical records.<sup>60</sup>

On August 26, 2001, Plaintiff called his supervisor to report he would be late due to his son's sickness.<sup>61</sup> The next day, Plaintiff called the Defendant's control room to inform Defendant he would be out for two or three additional days due to a sinus infection.<sup>62</sup> In his deposition, however, Plaintiff admitted that he was aware that he only was supposed to tell certain managers or his supervisor of absences, but he questions whether such a restriction was in keeping with the Defendant's policy.<sup>63</sup>

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<sup>58</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 33, p. 3.

<sup>59</sup> Facts at ¶ 32.

<sup>60</sup> Facts at 1133.

<sup>61</sup> Facts at ¶ 34.

<sup>62</sup> Facts at ¶ 35.

<sup>63</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 1,

Plaintiffs Dep. at p. 129.

Plaintiffs supervisor, Thigpen, reported to Defendant's management that Plaintiff had disobeyed instructions regarding whom to contact to report absences.<sup>64</sup>

Thigpen tried to call Plaintiff. Plaintiff returned the call, and Thigpen and Plaintiff had an angry conversation during which Plaintiff admits that he asked Thigpen, "Are you a dumb ass?"<sup>65</sup> Thigpen also admits to raising his voice during the conversation.<sup>66</sup> Defendant decided to terminate Plaintiffs employment.<sup>67</sup>

The Defendant terminated Plaintiffs employment due to Plaintiffs excessive absenteeism, failure to correct excessive absenteeism, insubordination, and failure to follow policies and instructions given by management in connection with attempts by management to correct his absenteeism.<sup>68</sup>

Plaintiffs termination form was dated August 30, 2001, and his effective date of termination was August 31, 2001.<sup>69</sup> Plaintiff was escorted out of Defendant's site by security personnel on September 1, 2001.<sup>70</sup>

Defendant's internal policy 2.9 sets forth an exit interview procedure and checkout procedure, neither of which Plaintiff received.<sup>71</sup> Defendant has a document that employees have been required to sign from time to time that lists conduct that an employee can be disciplined for.<sup>72</sup> This document will be referred to herein as "Rules of Conduct."<sup>73</sup>

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<sup>64</sup> Facts at ¶ 36.

<sup>65</sup> Facts at ¶ 37.

<sup>66</sup> Facts at ¶ 37-38.

<sup>67</sup> Facts at ¶ 39.

<sup>68</sup> See Defendant's Responses to Local Rule 26.03 Interrogatories at ¶ 1.[9-1]

<sup>69</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 39 (Affidavit of Lorrie A. Lott, Principal Human Resources Representative for the Human Resources Policies Administration Department for the Defendant, at HH 4-5).

<sup>70</sup> Facts at ¶ [40-41].

<sup>71</sup> Facts at 46-47.7

<sup>72</sup> Facts at ¶ 48.

<sup>73</sup> See Plaintiffs Book One, dated January 19, 2003 [sic] at Tab 13 (Rules of Conduct signed by Plaintiff).

On July 19, 2002, Plaintiff filed a charge of discrimination with the EEOC".<sup>74</sup> On September 13, 2002, the EEOC issued a Notice of Right to Sue letter.<sup>75</sup> As set forth infra, Plaintiff filed this action on January 14, 2003.<sup>76</sup> Defendant has a contractual obligation with DOE to follow the DOE contract.<sup>77</sup> There is a DOE Order 350.1 that is referred to in the contract between Defendant and DOE.<sup>78</sup>

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74 Facts at ¶ 42.

75 Facts at ¶ 43. The EEOC letter stated, in pertinent part: "Based upon its investigation, the EEOC is unable to conclude that the information obtained established violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed having been raised by this charge." See Exhibit 36 to Defendant's Motion for Summary Judgment. [40-1]

## **V, THE STANDARD FOR DETERMINING A MOTION FOR SUMMARY JUDGMENT**

The Defendant's Motion is governed by the holding in Celotex Corporation v. Catrett, 477 U.S. 317 (1986):

The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation there can be no "genuine issue as to any material fact,"\* since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.

Id. at 323; Fed. R. Civ. P. 56(c).

It is important to add that unsupported speculation by a non-moving party is insufficient to defeat a summary judgment motion. Felt v. Graves-Humphreys Co. 818 F. 2d 1126 (4th Cir. 1987). Similarly, genuine disputes of material facts are not demonstrated by the bald statements of a non-moving party in affidavits or depositions. Stone v. University of Md. Medical Sys. Corp., 855 F.2d 167 (4<sup>th</sup> Cir. 1988).

In deciding whether to grant a motion for summary judgment, all justifiable inferences must be drawn in favor of the non-moving party. Miltier v. Beorg 896 F.2d 848, 852 (4<sup>th</sup> Cir. 1990); citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242,255 (1986). In addition, "once a plaintiff 'has named a witness to support [his] claim, summary judgment should not be granted without... somehow showing that the named witness' possible testimony raises no genuine issue of material fact.'" Miltier, 896 F.2d at 852, quoting Celotex v. Catrett, 477 U.S. 317, 328 (1986) (White, J., concurring).

For purposes of evaluating the appropriateness of summary judgment, this court must construe the facts are set forth in the light most favorable to Cohen. See Matsushita Elec. Indus. Co.

v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) ("[O]n summary judgment the inferences to be drawn from the underlying facts... must be viewed in the light most favorable to the party opposing the motion.") (internal quotation marks omitted); Fed.R.Civ.P. 56(c) (Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.").

When, as in the present case, the Defendants are the moving party, and the Plaintiff has the ultimate burden of proof on an issue, the Defendants must identify the parts of the record that demonstrate the Plaintiff lacks sufficient evidence. The nonmoving party, then, must then go beyond the pleadings and designate "specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e). See Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

## **VI. ANALYSIS**

As Plaintiff has conceded, the issues before this Court are set forth in "a simple two count complaint for Wrongful Termination (Count I) and Retaliatory Discharge (Count II)." [58-1] Plaintiff's Complaint alleges that Defendant "created and established certain policies, practices and procedures, which defined the terms and conditions under which it expected all or its employees to conduct themselves."<sup>79</sup> Plaintiff further alleges that these policies were set out in a written document "identified as Procedure Manual 5B Human Resources Policies, Practices and Procedures and that the Procedure Manual set forth specific methods for handling such situations as Termination"<sup>80</sup> Plaintiff alleges that as an employee of the Defendant, he was entitled to rely on the Procedural Manual" and the Defendant was "obligated to follow the policies, practices and procedures set

<sup>79</sup> See Complaint, attached to Notice of Removal [1-1] ¶ 7.

<sup>80</sup> See Complaint, attached to Notice of Removal [1-1] at ¶ 8-9.



forth in the Procedural Manual."<sup>81</sup> Plaintiff alleges that Defendant breached certain terms of the Procedure Manual when Defendant terminated Plaintiff.<sup>82</sup>

#### **A. Whether the Defendant's Procedure Manual Creates an Employment Contract**

Although Plaintiff contends that the Defendant's Procedure Manual, and specifically Policy 2.9, creates a contract of employment between him and the Defendant, he offers no evidence that would create a genuine issue of material fact that would preclude summary judgment for the Defendant. The general rule in South Carolina is that employment is "at will" and employees, or their employers, may end the relationship at any time, for any reason, or for no reason. Small v. Springs Industries 388 S.E.2d 808,810 (S.C. 1990); Prescott v. Farmers Telephone Cooperative, Inc., 516 S.E.2d 923,925 (S.C. 1999). Put another way, "[u]nder South Carolina law, absent specific exceptions, employment is at-will and the employee can be discharged for any reason or no reason at all." Storms v. Goodyear Tire & Rubber Co., 775 F.Supp. 862, 865 (D.S.C. 1991), citing Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 337 S.E.2d 213 (1985); Todd v. S.C. Farm Bureau Mut. Ins. Co. 276 S.C. 284, 278 S.E.2d 607 (1981). It is true that an employer can contractually alter this at-will relationship by issuing an employee handbook that, by its language, limits the employer's right to discharge an employee. However, the mere existence of an employee handbook does not mean that there is an employment contract. For a contract to be created, the employee must be aware of promises in the handbook, must have relied on (and continued work in reliance on) those

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<sup>81</sup> See Complaint, attached to Notice of Removal [1-1] at ¶ 10-11.

<sup>82</sup> See Complaint, attached to Notice of Removal [1-1] at ¶ 13-14;

see also Plaintiff's deposition at pp. 133-138, attached as Exhibit 1 to Defendant's Second Memorandum in Support of its Motion for Summary Judgment. [67-1]

promises, and the promises must restrict the right to discharge. Finally, there must be some evidence that the promise was breached in discharging the employee. In Small v. Springs Industries, 292 S.C. 481, 357 S.E.2d 452 (1987) the South Carolina Supreme Court recognized that an employee handbook could modify the at-will employment relationship. This exception to the at-will employment rule is based on the theory of unilateral contract. Small v. Springs Industries, 292 S.C. 481, 357 S.E.2d 452 (1987). However, a unilateral contract offer requires that the promissory language in a handbook be manifestly and intentionally communicated to the employee. Only then can an employee accept the offer, and provide consideration, by relying on it and continuing to work. Small, 357 S.E.2d at 454. ("Small's action in forbearance in reliance on Spring's promise was sufficient consideration to make the promise legally binding.") (emphasis added); Taylor v. Cummins Atlantic, 852 F.Supp.1279 (D.S.C.1994), *affd*, 48F.3d 1217 (4th Cir.), *cert. denied*, 116 S. Ct. 176 (1995)) (the employee must be aware of the alleged promise and rely on it.<sup>83</sup>) Therefore, a handbook promise must not only exist, but a plaintiff must know that it exists in order to alter the at-will relationship.

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<sup>83</sup> There are many cases from other states that specifically hold an employee must have been aware of the promissory language in the handbook. See, e.g. Eerdmans v. Maki, 573 N.W.2d 329 (Mich. 1997); Birmingham Parking Authority v. Wiggins, 797 So.2d 446 (Ala. 2001); Frick v. Univ. Hosp. of Cleveland, 727 N.E.2d 600 (Ohio 1999); Irvin v. Community Bank, 717 So.2d 359 (Ala. 1997); Williams v. Precision Coil, Inc., 459 S.E.2d 329 (W.Va. 1995); Duldulao v. St Mary of Nazareth Hosp. Ctr., 505 N.E.2d 314 (Ill. 1987). Indeed, there does not appear to be any case law contrary to the above cases. It is important to note that while a South Carolina court has not specifically held awareness is required, separate South Carolina courts have held the employee must continue employment in reliance of the handbook language and, in other contexts, that one cannot rely on something of which one is not aware. Towles v. United Health Care, 524 S.E.2d 839 (S.C. App. 1999) (must be reliance); Prescott v. Farmers Telephone Coop, Inc., 516 S.E.2d 923, 925 (S.C. 1999) (must be reliance); and Williams v. Texas Co., 24 S.E.2d 873, 878 (S.C. 1943) (must have knowledge of the facts for there to be reliance).

Second, the handbook must restrict the right to discharge. To create a contract, handbook must also make a promise that the employee is entitled to something related to discharge. For example, in Bookman v. Shakespeare, the employer's written policy promised employees that it would investigate all complaints of harassment carefully. The employee (Bookman) became involved in a fight with a co-worker because the co-worker was sexually harassing her. 442 S.E.2d 183 (S.C. App. 1994). She claimed the employer violated its written promise to investigate all sexual harassment complaints "promptly and carefully." If they had made a careful investigation, she alleged, the fight would not have occurred. Although the court found that the employer may have breached its promise to investigate carefully, the court held that a promise to investigate "carefully" does not restrict the employer's right to discharge. The employer was free to terminate the employee because the "careful investigation" promise was not a promise that limited the employer's right to terminate at-will.

The South Carolina Court of Appeals reached the same legal conclusion in Prescott v. Farmers Telephone Co-op., Inc. 491 S.E.2d 698,702 (S.C. App. 1997) (rev'd on other grounds 516 S.E.2d 923 (S.C. 1999)). In Prescott, the handbook listed types of conduct that could result in discipline. The handbook also promised that employees could have the termination decision reviewed by higher levels of management. Critically, the court held, Prescott did not direct the court to any language in the handbook promising pre-termination warnings or other procedures. Therefore, the court noted, the case was unlike previous South Carolina handbook cases that dealt with promises of pre-termination procedures. A promise concerning review after the decision was made, the court held, did not limit the right to discharge. The court also held that the listing of conduct that could result in discipline, without promising a certain procedure before discipline, did not limit the right to discharge. See also Epps v. Clarendon County. 405 S.E.2d 386 (S.C. 1991) (a handbook that did not address pre-termination

procedures did not create a contract).

In every handbook case in which the South Carolina Supreme Court has found a jury question, language in the handbook restricted the pre-discharge procedure. For example, in Smalls v. Springs Industries, the handbook stated there would be four warnings before discharge, but only one warning was given. 357 S.E.2d 452 (S.C. 1987). Likewise, in Jones v. General Electric, the disciplinary policy stated that offenses "with repetition will lead to disciplinary time off and/or discharge." 503 S.E.2d 173,183 (S.C. App. 1998). In Conner v. City of Forrest Acres, the handbook stated "employees shall be treated fairly and consistently," and "discipline shall be of an increasingly progressive nature." 560 S.E.2d 606, 611 (S.C. 2002). The South Carolina Supreme Court has never held that the mere recitation of types of discipline, or that promissory language in a handbook that does not relate to the discharge procedure, is enough to create a jury question on an alleged promise to follow certain procedures before discharge. Accordingly, the Defendant should be granted summary judgment on this claim.

## **B. Whether the Defendant Breached a Contract with the Plaintiff**

Plaintiff admitted in his deposition that his breach of contract claim was based solely on Defendant's Policy 2.9, and specifically testified that there were no other policies he was relying upon.<sup>84</sup> Policy 2.9 sets forth the termination practices to be followed by the Defendant's human resources division. Reading Plaintiff's Complaint liberally, as this Court is compelled to do, it appears that Plaintiff alleges that Defendant's Policy 2.9 is an employment contract or employment policy, and Plaintiff has identified three incidences which he argues are Defendant's

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<sup>84</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 1, Plaintiff's Dep. at pp. 132-139.

breaches of Policy 2.9:<sup>85</sup> (1) Plaintiff was denied due process under Defendant's Policy 2.9; (2) Plaintiff was denied an exit interview; and (3) Plaintiff's discharge had not been approved by Defendant's president.<sup>86</sup> Each of these allegations will be addressed seriatim.

### **1. Defendant's Policy 2.9**

This Court has reviewed Defendant's Policy 2.9, which purpose is stated as follows: "This practice establishes requirements and responsibilities for voluntary or involuntary termination of employment from [the Defendant]".<sup>87</sup> Thus, Policy 2.9 defines the parameters of "termination processing".<sup>88</sup> Just as the policy discussed in Prescott, Defendant's Policy 2.9 sets forth the Defendant's procedures involved in the termination process.<sup>89</sup> The policy addresses the administrative process of termination and the responsibilities of Defendant's various departments in the termination process. Significantly, however, Policy 2.9 does not contain any substantive promise to the Plaintiff that could be construed as limiting Defendant's right to discharge.

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<sup>85</sup> Plaintiff testified that he did not know of any other policies that had been violated. See Defendant's Motion for Summary Judgment [40-1] at Tab 1, Plaintiff's Dep. at p. 139).

<sup>86</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 1, Plaintiff's Dep. at pp. 132-139. Plaintiff also testified that he believed he should have been given advance notice of his termination under Policy 2.9, (Plaintiff's Dep. at p. 134, lines 8-17) but he appears to have abandoned this issue as he has not briefed it to the Court. In any event, to the extent that Policy 2.9 addresses advance notice, it does so only with respect to a direction to managers that they give advance notice to other of Defendant's departments in order to ensure administrative coordination of the termination.

<sup>87</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 38, titled Termination Practices, contained in Human Resources Policies, Practices and Procedures, Manual 5B, Procedure 2.9.

<sup>88</sup> See Defendant's Motion for Summary Judgment [40-1] Tab 38 at p. 6.

<sup>89</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 38, titled Termination Practices, contained in Human Resources Policies, Practices and Procedures, Manual 5B, Procedure 2.9.



Nevertheless, construing Plaintiffs Complaint broadly, as this Court must do, it appears that Plaintiff asserts that Policy 2.9 affords him some type of due process. However, the express terms of the Policy do not contain any mention of due process (either by that express term or by description) or, in fact, any discussion of pre-discharge process as it relates to the employee. Thus, this policy is the same as the policy in Prescott. A review of Policy 2.9 indicates that it addresses the Defendant's process of dealing with a terminated employee. Policy 2.9 does not promise the Defendant a pre-termination procedure and therefore no part of Policy 2.9 was breached when Plaintiff was terminated.

## **2. The Exit Interview**

Plaintiff also claims that he was not afforded the exit interview as promised in Policy 2.9 and he argues that this constitutes a breach of his employment contract. Again, Policy 2.9 sets forth the "Termination Practices" which govern the administrative process of termination. As is clear from the text of Policy 2.9, "Human Resources is responsible for collecting all completed forms and conducting an exit interview with the employee on his/her last day of work (if requested by the employee)." As a threshold matter, Policy 2.9 makes clear that any "exit interview" is a post-termination procedure. Second, and perhaps most importantly, Plaintiff admitted in his deposition that he did not request an exit interview.<sup>90</sup> Therefore, the fact that Plaintiff did not ask for, and receive an exit interview cannot be viewed as a breach of Policy 2.9 by the Defendant.

## **3. Proper Approval of Plaintiffs Termination**

Plaintiff also alleges that the termination procedure was not followed because the Defendant's president should have approved his termination. As with the issues discussed *infra*, this issue is without merit.

Defendant's Policy 2.9 unequivocally states "The [Defendant's]

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<sup>90</sup> Defendant's Motion for Summary Judgment [4] at Tab 1. Plaintiff's Dep. at p. 137, lines 18-25.



president or designee is responsible for approving any "Discharge" or "Discontinue terminations."<sup>91</sup> Thus, Policy 2.9 plainly states that the president can designate another person to approve discharges. This is exactly what was done in the present case. Executive Vice-President David Amerine was Defendant's President's designee.<sup>92</sup> Mr. Amerine reviewed the Human Resources Review Committee's recommendation and approved Plaintiff's discharge on August 30, 2001.<sup>93</sup> Plaintiff was terminated, effective August 31, 2001 for failure to follow the terms of probation, and for insubordination.<sup>94</sup> Plaintiff's claim that his termination was not properly approved is without merit.

### **C. Other Policies**

After the Defendant filed its Motion for summary judgment in January 2004, Plaintiff asserted that his termination was in violation of other of Defendant's policies, but he has failed to explain to this Court the manner in which these policies might restrict Defendant's right to discharge him. In addition, Plaintiff stated in his deposition that his breach of contract claim was based only on Policy 2.9 and he specifically testified that there were no other policies on which he was relying on.<sup>95</sup> Plaintiff cannot create a material issue of fact in opposition to summary judgment by submitting factual assertions that contradict his prior sworn deposition testimony.

<sup>91</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 38 (Policy 2.9).

<sup>92</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 39 (Affidavit of Lorrie A. Lott, Principal Human Resources Representative for the Human Resources Policies Administration Department for the Defendant, at ¶4.

<sup>93</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 39 (Affidavit of Lorrie A. Lott, Principal Human Resources Representative for the Human Resources Policies Administration Department for the Defendant, at ¶4.

<sup>94</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 39 (Affidavit of Lorrie A. Lott, Principal Human Resources Representative for the Human Resources Policies Administration Department for the Defendant, at ¶5.

<sup>95</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 1, Plaintiff

See, e.g., Hernandez v. Trawler Miss Vertie Mae, Inc., 187 F.3d 432,438 (4th Cir. 1999); Rohrboueh v. Wveth Laboratories, 916 F.2d 970,975 (4th Cir. 1990); Barwick v. Celotex Corp., 736 F.2d 946,960 (4th Cir. 1984). As the Fourth Circuit stated in Barwick, the efficacy of summary judgment would be greatly diminished "[i]f a party who has been examined at length in deposition could raise an issue of fact simply by submitting an affidavit contradicting his own prior testimony." 736 F.2d at 960. "[A] genuine issue of material fact is not created where the only issue of fact is to determine which of the two conflicting versions of the plaintiff's testimony is correct." *Id.*

More significantly, however, even if Plaintiff had asserted (prior to Defendant filing its Motion for Summary Judgment) that other policies prohibited his termination as it occurred, it remains that none of the other policies mentioned by Plaintiff serve to alter his status as an at-will employee of the Defendant. First, Plaintiff's reliance on Defendant's "Rules of Conduct" is wholly misplaced, as these rules of conduct list only the types of conduct that can result in discipline.<sup>96</sup> The rules do not promise any pre-termination procedure. Therefore, the Defendant's rules of conduct are exactly like the rules of conduct in Prescott and do not limit the Defendant's right to discharge an employee.

Second, while Plaintiff did not testify that it formed a part of his contract claim, Plaintiff stated in his deposition that he could not be required to report to certain managers about his absences because the attendance policy only mentions management in general.<sup>97</sup> As discussed above, however, the Defendant's instruction to Plaintiff that he must report to a specific person does not restrict the Defendant's right to discharge that employee.

<sup>96</sup> See Plaintiff's Book One, dated January 19, 2003 [sic] at Tab 13 (Rules of Conduct signed by Plaintiff).

<sup>97</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 1, Plaintiff's Dep. at pp. 12-13, 20, 100, 111, 129.

Simply stated, that instruction does not change the nature of the at-will relationship because the Defendant did not promise Plaintiff that he would not be discharged if he reported to any manager. Moreover, the absence of a written statement authorizing the Defendant to instruct an employee as to a certain procedure does not contractually preclude Defendant from doing so. To conclude the opposite would result in a policy whereby an employee could refuse any instruction not specifically authorized in writing. This Court will not accept Plaintiff's argument, for it would lead to an absurd result.<sup>98</sup>

Finally, Plaintiff argues that he could not be required to return to work if he had a medical problem. This argument is equally unavailing, because the Defendant had no policy that promised him this. In addition, this Court notes that Plaintiffs medical excuses had restrictions, but not work exclusions. Therefore, Plaintiff's argument is wholly without merit.

#### **D. Plaintiffs Claim of Retaliatory Discharge**

Plaintiffs second cause of action alleges retaliatory discharge by the Defendant. Plaintiff describes himself as a "well-educated, outspoken African American" who "often spoke-out [sic] on issues" and "advised other employees [of the Defendant] of their rights and obligations under the Procedural Manual."<sup>99</sup> Furthermore, Plaintiff owned and operated his own business "at the time he worked for [the Defendant]" and "[t]he fact that [Plaintiff] was out-spoken [sic] as herein described caused certain managers at [Defendant] to

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<sup>98</sup> As Defendant correctly argues in its Second Memorandum in Support of its Motion for Summary Judgment, Plaintiff's argument, if accepted, would cause the employer to set forth a seemingly limitless set of written rules that would attempt to address every possible interaction between employers and management. As the Defendant notes, it need not have a written policy that prohibits an employee from punching his or her supervisor in the nose. To expect that an employer could articulate a written policy that could anticipate every possible occurrence defies common sense. For Plaintiff to argue that the Defendant should have had such a policy stretches credulity to a breaking point.

<sup>99</sup> See Complaint, attached to Notice of Removal, at ¶¶ 17-19.

want to terminate him."<sup>100</sup> Plaintiff further alleges that "[t]he fact that [Plaintiff] owned and operated a business caused certain managers at [Defendant] to be jealous and want to terminate him."<sup>101</sup> Therefore, Plaintiff reasons, Defendant "retaliated against [Plaintiff] by terminating him as an employee."<sup>102</sup> Plaintiff alleges that the retaliatory termination was a result of his exercise of "[t]he right to speak out" and "[t]he right to own your own business."<sup>103</sup> The evidence, however, points to a different reason for termination; Plaintiff's insubordination and his failure to follow the directives of management. Defendant has presented this Court with a wealth of evidence documenting issues Defendant called to Plaintiff's attention regarding various infractions of Defendant's rules,<sup>104</sup> Plaintiff's tardiness, unannounced absences from work, and general poor attendance at work.<sup>105</sup> Even if Plaintiff's claim of retaliation were entitled to review by this Court, Plaintiff could not sustain his burden of proving a *prima facie* retaliation claim. In order to state such a claim, Plaintiff must show that (1) he engaged in protected activity; (2) Defendant took an adverse employment action against him; and (3) a causal connection existed between the protected activity and the adverse action. Laughlin v. Metropolitan Washington Airports Authority, 149 F.3d 253 (4th Cir. 1998);

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<sup>100</sup> See Complaint, attached to Notice of removal, [1-1] at ¶¶ 20, 23.

<sup>101</sup> See Complaint, attached to Notice of Removal, [1-1] at U 24.

<sup>102</sup> See Complaint, attached to Notice of Removal, [1-1] at ¶ 25.

<sup>103</sup> See Complaint, attached to Notice of Removal, [1-1] at ¶ 26-27.

<sup>104</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 3 (out of work area without proper authorization), Tab 32 (sleeping on shift) and Tab 33 (placed on probation for es of Conduct, Requests for Time off, Insubordination, unsatisfactory job performance and failure to keep Defendant advised regarding his medical condition).

<sup>105</sup> See Defendant's Motion for Summary Judgment [40-1] at Tabs 4, 5, 6, 7, 9, 10, 11, 17, 20, 21, 22, 23, 25, 26, 33, and 34.

Dowe v. Total Action Against Poverty In Roanoke Valley, 145 F.3d 653 (4th Cir. 1998); Mundav v. Waste Management Of North America, Inc., 126 F.3d 239 (4th Cir. 1997).

Under the controlling statutory language, protected activities fall into either the opposition clause or the participation clause. See Kubicko v. Ogden Logistics Services, 181 F.3d 544, 551 (4th Cir. 1999) citing 42 U.S.C. § 2000e-3(a) (making it unlawful for an employer to discriminate against an employee because he has opposed an unlawful employment practice or because he has made a charge, ..., or participated in an investigation under the statute); see also, Laughlin, 149 F.3d at 257. The Fourth Circuit Court of Appeals has said that "[opposition activity encompasses utilizing informal grievance procedures as well as staging informal protests and voicing one's opinions in order to bring attention to an employer's discriminatory activities." Kubicko, 181 F.3d at 551. In the present case, Plaintiff cannot satisfy the first prong of his retaliation claim because he cannot show that he engaged in any statutorily protected oppositional or participatory activity. Therefore, Defendant is entitled to summary judgment on Plaintiff's claim of retaliatory discharge.

#### **E. Plaintiff Has Admitted That He Failed to Mitigate His Damages**

Even if Plaintiff were successful in showing that a genuine issue of material fact existed that would preclude summary judgment for the Defendant, it remains that any potential award to Plaintiff would be affected by the fact, as admitted by Plaintiff, that he failed to mitigate his damages.<sup>106</sup>

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<sup>106</sup> As it was stated by the Plaintiff [68-1] that he does not base the instant action on racial discrimination, this Court will not engage in a discussion of mitigation of damages as required by Title VII, as amended, 42 U.S.C. §2000e-5(g).



Under South Carolina law, "[t]he doctrine of avoidable consequences operates in wrongful discharge actions, as in others, to permit a wrongfully discharged employee to recover only damages for losses which, in the exercise of due diligence, he could not avoid. The employee's so-called duty to mitigate his damages permits the employee to recover the amount of his losses caused by the employer's breach reduced by the amount the employee obtains, or through reasonable diligence could have obtained, from other suitable employment." Hinton v. Designer Ensembles, Inc., 335 S.C. 305, 516 S.E.2d 665, 672 (Ct. App. 1999), quoting Chastain v. Owens Carolina, Inc., 310 S.C. 417, 419-20, 426 S.E.2d 834, 835 (Ct. App. 1993), *in turn* quoting Small v. Springs Industries, Inc., 300 S.C. 481, 388 S.E.2d 808 (1990). "[T]he party who claims damages should have been minimized has the burden of proving they could have been avoided or reduced." Chastain, 310 S.C. at 420, 426 S.E.2d at 835. "Whether an employee has fully mitigated his damages is a question of fact to be determined from the circumstances of each case." *Id.* at 420, 426 S.E.2d at 836.

Under the circumstances of the present case, it is apparent that Plaintiff failed to mitigate his damages. Plaintiff admitted in his deposition that he did not want to increase his income because that would cause him to pay additional child support.<sup>107</sup> He also testified that he disposed of his interest in his clothing store because the judge in his divorce case thought he was hiding business records to shield his income.<sup>108</sup> Plaintiff further admitted he was not seeking jobs that would cause him to earn more than "a minimal amount of money."<sup>109</sup> Plaintiff therefore has deliberately avoided his duty to mitigate his damages.

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<sup>107</sup>See Defendant's Motion for Summary Judgment [40-1] at Tab 1 (Lawrence Dep. p. 159)

<sup>108</sup>See Defendant's Motion for Summary Judgment [40-1] at Tab 1 (Lawrence Dep. pp. 157-158).

<sup>109</sup>See Defendant's Motion for Summary Judgment [40-1] at Tab 1 (Lawrence Dep. p. 159).



## **VII. CONCLUSION**

For the aforementioned reasons, it is recommended that Defendant's Motion for Summary Judgment [40-1] be granted.

George C. Kosko

s/ George C. Kosko

George C. Kosko

United States Magistrate Judge

July 19, 2004

Charleston, South Carolina



UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

FILED  
September 12, 2005

No. 05-1506  
CA-03-484-RBH

CHRISTOPHER LAWRENCE

Plaintiff – Appellant

v.

WESTINGHOUSE SAVANNAH RIVER COMPANY LLC

Defendant – Appellee

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ORDER  
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The appellant has filed an untimely petition for rehearing. This Court strictly enforces the time limits for filing Petitions for rehearing and rehearing en banc. The Court denies the petition for rehearing as untimely filed.

For the Court – By Direction

“/s/ Patricia S. Connor”  
CLERK

APPENDIX E

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

Lewis F. Powell Jr. United States Courthouse Annex  
1100 E. Main Street, Suite 501  
Richmond Virginia 23219-3517  
www.ca4.uscourts.gov

Patricia S. Connor  
Clerk

Telephone  
(804) 916-2700

September 12, 2005

Christopher Lawrence  
2740 Highpoint Rd.  
Snellville, GA, 30078

Charles Franklin Thompson Jr., Esq.  
MALONE, THOMPSON & SUMMERS LLC  
1312 Gadsen Street  
Columbia, SC 29201

Re: 05-1506 Lawrence v. Westinghouse Savan  
CA-03-484-RBH

Dear Counsel and Mr. Lawrence:

Enclosed is a copy of an order filed today  
in this case. Also Enclosed to Mr. Lawrence are  
the two audio cassette tapes submitted with the  
untimely petition for rehearing.

Yours truly,

PATRICIA S. CONNOR  
Clerk

/s/ Michael Radday

By: \_\_\_\_\_  
Deputy Clerk

Enclosure (s)

Cc: Clerk, U.S. District Court  
**APPENDIX E**

In the District Court of the United States  
For The District of South Carolina

**FILED**

AIKEN DIVISION

JUN 14 2004

Larry W. Propes, Clerk  
Charleston, SC

Christopher Lawrence )

)

Plaintiff ) Civil Action No. 1:03-484-BG

)

)

)

**BRIEFING ORDER**

Westinghouse Savannah )

River Company LLC )

)

Defendant )

)

\_\_\_\_\_ )  
This is an Order directing the parties on the Court's requirement for briefing on the summary judgment motion filed in this case.

I. Immediately upon completion of the hearing on this date, counsel for the Defendant, and the Plaintiff, shall confer, and shall agree upon a Statement of Undisputed Facts. This Statement shall not be argumentative but shall state those facts upon which there is no dispute. This consultation shall be conducted in good faith, and upon completion thereof, the parties shall recite in open Court the facts upon which they agree. These facts shall be reduced to writing by the Defendant, and shall be filed with the Court and titled Statement of Undisputed Facts.

Only the facts necessary for this Court to determine the motion for summary judgment shall be in this Statement of Undisputed Facts.

**APPENDIX F**

II. If the parties verily the Court should be made aware of a fact which are contested, that is, not agreed to by both parties, such party shall file with the Court no later than 12:01 p.m. Friday, June 18, 2004, a Statement of Disputed Facts. This Statement shall follow this form:

1. Each fact shall be separately stated, and numbered.
2. Each fact shall provide a clear reference or citation to the location(s) of the fact in the documents filed, the page upon which the fact can be found, and the paragraph number where it can be located.

This Statement of Disputed Facts shall be served upon the opposing the party by such means as to insure it is received on or before the filing deadline. Service is to be accomplished by either express mail delivery, facsimile, and/ or e-mail. An affidavit shall be filed thereafter with the Court setting forth the method of delivery to the opposing party.

The opposing party shall have until 12:01 p.m. on Wednesday, June 23, 2004, to file a response to the Statement of Disputed Facts. This document shall follow the same directives as to form and substance as stated hereinabove.

III. The Defendant shall re-submit a brief arguing the reasons it is entitled to summary judgment. This brief shall be filed on or before 12:01 p.m., Friday, June 25, 2004. Service upon the Plaintiff shall be as provided hereinabove and an affidavit shall be filed setting for the method of delivery as hereinabove provided.

IV. The Plaintiff shall file a brief in response to the Defendant's brief for summary judgment on or before 12:01 p.m. on Friday, July 2, 2004. Service upon Defendant's counsel shall be as provided hereinabove and affidavit shall be filed setting forth the method of delivery as hereinabove provided.



V. Should the Defendant elect to file a reply brief, it shall file it on or before 12:01 p.m. on Wednesday, July 7, 2004. Service upon the Plaintiff shall be as provided hereinabove and an affidavit shall be filed setting for the method of delivery as hereinabove provided.

VI. The Local Civil Rules of this Court shall be strictly adhered to, including, but not limited to the length of the briefs. The parties also are directed to include a copy of the page of any document referred to in the brief, responsive brief, and reply brief. This copy shall be from a document already filed and shall have affixed to the bottom of the document the name of the document, the date it was filed, and the page number. The Court does not intend the parties to re-file the documents already on file, but only to attach the one page from such filed document that supports arguments made in the brief.

This Briefing Order has set forth short time periods for compliance. The parties have already filed numerous documents and briefs, and this re-filing will impose minimal additional work.

“S/ George C. Kosko  
George C. Kosko

June 14, 2004  
Charleston, South Carolina

## APPENDIX F

Law Offices  
**MALONE & THOMPSON**  
1527 Blanding Street (29201)  
Columbia, South Carolina 29211-1288  
Telephone 803 254-3300  
Facsimile 803 254 0309  
E-Mail firm@mandtlawfirm.com

Michael D Malone  
Charles F. Thompson Jr. \*  
Labor & Employment  
Employee Law

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Special Counsel  
Lawrence J. Needle

*Immigration*

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Of Counsel  
Robert E. Allen Δ

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H. Frank Malone  
1930-2002

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June 15, 2004

VIA FACSIMILE 843-579-2635

The Honorable George C. Kosko  
United States Magistrate Judge  
P. O. Box 833  
Charleston, S.C. 29402

**RE: *Lawrence v. Westinghouse Savannah River  
Company 03-484-26BG***  
Dear Judge Kosko:

**APPENDIX G**

56A

I completed my statements of uncontested and contested facts today and have overnighted copies to Mr. Lawrence. I also left him a voicemail offering to fax or email them. The clerk was very helpful in rushing a copy of the hearing tape to me.

After reflecting on the hearing, I would like to address the jurisdictional issue mentioned by the court. I would not attempt to invoke federal jurisdiction if it were not warranted. I have repeatedly tried to get Mr. Lawrence to agree that he is not asserting a claim for race discrimination. If he had agreed to this earlier in the case, I would have agreed to a remand. However, he steadfastly insists on having his cake and eating it too. He will state that his claim is based on breach of contract but he will also insist that his absences and other conduct (that caused his discharge) were treated differently because of race. I do not know what to else to call this but a race discrimination claim. So long as he clings to this assertion, I believe my client has a justified right to invoke federal jurisdiction. Of course, after all that has transpired in the case, I hope that the court uses its supplemental jurisdiction to address the state law claims even if the door is closed on any discrimination claim.

Yours very truly,

"S/ Charles F. Thompson, Jr."

Charles F. Thompson, Jr.

CFT/mmi

cc: Mr. Christopher Lawrence

Mtesa Cottemond, Esquire

## APPENDIX - G



1     **IN THE UNITED STATES DISTRICT**  
2     **COURT FOR THE DISTRICT OF SOUTH**  
3     **CAROLINA**

4     CHRISTOPHER LAWRENCE

5     vs

6     WESTINGHOUSE SAVANNAH  
7     RIVER COMPANY LLC  
8     03 – CV - 484

9     Motion Hearing in the above matter held on  
10    Monday, January 5, 2004, commencing at 10:09  
11    a.m., before the Hon. George C. Kosko, in the  
12    United States Courthouse, 85 Broad Street,  
13    Charleston, South Carolina, 29401.

14  
15    **APPEARANCES:**

16    Christopher Lawrence, 2740 Highpoint Rd.  
17    Snellville, GA appeared pro se.

18    Charles F. Thompson, JR., ESQ., 1527  
19    Blanding Building, Columbia, SC appeared  
20    for defendant.

21    RECORDED BY Gilbert O'Brien, ESR OPERATOR

22    TRANSCRIBED BY DEBRA L. POTOCKI, RDR,  
23    CRR 85 Broad Street, Charleston, SC, 29401

24    843-723-2208

24 Proceedings recorded by electronic sound recording;  
25 transcript produced by computer-aided transcription

1 THE Court: First case is Lawrence versus  
2 Westinghouse, 3-484  
3 Mr. Lawrence?  
4 MR. Lawrence: Yes, sir.  
5 THE Court: Yes, sir what?  
6 MR. Lawrence: I'm present. Yes, sir.  
7 Plaintiff presented - - provided to the Court motion  
8 to compel the defendant to provide timely requests  
9 and entirely requests to produce documents that is  
10 needed to prepare the pretrial brief and prior  
11 before then, to conduct the proper depositions of  
12 the witnesses.  
13 Well, the plaintiff requested numerous times  
14 through phone calls to - -  
15 THE Court: Say that again to me real slow now.  
16 MR. Lawrence: Yes, sir.  
17 THE Court: The plaintiff has requested numerous  
18 times through - -  
19 MR. Lawrence: Through certified - -  
20 THE Court: - - phone calls. Is that what I  
21 heard?  
22 MR. Lawrence: Phone calls.  
23 THE Court: Okay.  
24 MR. Lawrence: Fax, and then service of a letter  
25 to produce. And up to this point, the defendant did



1 provide some of the documents that is needed, but  
2 not entirely. So upon the last request, the  
3 defendant responded with the letter of objections  
4 and refused to do the search of documents, which led  
5 me to file this motion before the Court.  
6 THE Court: All right, Mr Lawrence, you've been  
7 here before.  
8 MR. Lawrence: Yes, sir.  
9 THE Court: In a pro se status.  
10 MR. Lawrence: Yes sir.  
11 THE Court: And we've explained to you in the  
12 past that we will grant you great latitude, but we  
13 will not suspend the Rules of Civil Procedure, we  
14 will not suspend the local rules just because you  
15 choose not to get an attorney.  
16 MR. Lawrence: Yes, sir.  
17 THE Court: Do you understand that?  
18 MR. Lawrence: Yes, sir.  
19 THE Court: Now, where's your certificate of  
20 service of this motion?  
21 MR. Lawrence: Right here.  
22 THE Court: That was attached to the pleading?  
23 MR. Lawrence: Yes, sir.  
24 THE Court: Let me see it. Mr. Thompson?  
25 MR. Thompson: Yes, Your Honor.

1 THE Court: Did you get this motion?  
2 MR. Thompson: I have a motion to compel Fed  
3 Rule of Civil Procedure 37 and memorandum of  
support  
4 thereof.  
5 THE Court: So, you did get it?  
6 MR. Thompson: Yes, Your Honor, I did.  
7 THE Court: Okay. Well, the certificate of  
8 service is not attached to the original.  
9 All right, Mr. Thompson, what do you say about  
10 Mr. Lawrence's pro se motions?  
11 MR. Thompson: Well, Your Honor, he's not really  
12 being specific about what he wants, but we have  
13 timely and fully responded to any relevant timely  
14 requests that he has made. In fact, my client has  
15 really bent over backwards.  
16 There are some objections to his last-minute  
17 request to produce he served just a few days  
18 before the expiration of discovery deadline. And  
19 not only were the requests untimely, but irrelevant  
20 as well. And I'm not sure specifically what - -  
21 THE Court: Have you filed a motion for  
22 protective order?  
23 MR. Thompson: No, Your Honor.  
24 THE Court: Okay, so you've waived that  
25 argument

1 MR. Thompson: There was nothing privileged that  
2 he's seeking or anything that would require--  
3 THE Court: If you asked - - if you suggest that  
4 his interrogatory and discovery is not relevant,  
5 then rather than not respond to it, you need to file  
6 a motion for protective order. Otherwise, I will  
7 contend that I will have no reason to believe that  
8 this is standard boiler plate, irrelevant, will not  
9 lead to discoverable evidence, da, da, da,da, ad  
10 nauseam. But if you're really serious about it,  
11 you'll file a motion for protective order.  
12 Now, let's take Exhibit A, dated November the  
13 13, 2003. Mr. Lawrence, where's your certificate of  
14 service on this motion?  
15 MR. Lawrence: It was served to--  
16 THE Court: Where is your certificate?  
17 MR. Lawrence: Your Honor, I don't have it with  
18 me, but it was served--  
19 THE Court: It's not filed with your documents,  
20 it's not attached to your motion to compel as  
21 required by the local rules. Local rules also  
22 require you to file a certificate of - - have a  
23 certificate of service for every pleading that's  
24 filed, be it pro se or be it an attorney. I don't  
25 see one here.

1 Motion denied, failure to follow the local  
2 rules.  
3 Go to Exhibit B, dated November the 4<sup>th</sup>, 2003.  
4 Where's your certificate of service on that?  
5 MR. Lawrence: Exhibit B. This too was not  
6 attached as an exhibit with the certificate of  
7 service, but every time the plaintiff served the  
8 document to the defendant to respond, there was a  
9 certificate of service attached to his.  
10 THE Court: Not with the copy to the Court  
11 Denied, failure to follow local rules  
12 Go to Exhibit B - -C, dated October 23, 2003  
13 Plaintiff's third request to produce specific  
14 documentation from defendant. It does have a  
15 certificate of service on it.  
16 MR. Lawrence: Yes, sir.  
17 THE Court: All right. Explain to me why I  
18 should waive the local rule for failure to follow it  
19 and not make your motion to compel in a timely  
20 fashion.  
21 MR. Lawrence: On this particular one, Your  
22 Honor--  
23 THE Court: We're talking about Exhibit C to  
24 your motion, and the document is captioned  
25 plaintiff's third request to produce specific

1 documentation from the defendant, and it is dated  
2 October the 23<sup>rd</sup>.  
3 MR. Lawrence: Yes, sir.  
4 THE Court: Okay?  
5 MR. Lawrence: The defendant provided, and their  
6 response to me was that there was nothing logged in  
7 Mr. Thigpen's file relevant to what I asked him to  
8 produce. And then after talking with - -we appeared  
9 here for the first motion to compel, and I  
10 specifically talked with Mr. Malone, Attorney  
11 Malone, and I gave him information. Well, they in  
12 turn provided a letter to me saying that they have  
13 searched and searched, and there is nothing there.  
14 Later on, sometime in - - in their later  
15 providing documents to me, then it surfaced, after  
16 countless times they were saying we searched nothing  
17 there in Mr. Thigpen's file, nothing.  
18 THE Court: Mr. Thompson, what do you say about  
19 that?  
20 MR. Thompson: Well, first, Your Honor, this  
21 dates back to - - when he made this request, it was  
22 faxes letter to me, not in an interrogatory or  
23 request to produce. Nevertheless, Westinghouse  
24 sought to provide him information. He asked for a  
25 human resources file, which we gave him. We weren't



1 playing games with him. Westinghouse has documents,  
2 as you can imagine, all over the place. He  
3 requested human resources file, that's what I asked  
4 my client to provide, that's what they provided.  
5 We did not have some documentation that some  
6 supervisors or managers out there had. Once I  
7 talked to Mr. Lawrence, and this is over probably a  
8 couple months, and got specifically what complaints  
9 he alleges were logged against his old supervisor  
10 Mr. Thigpen, then we could go back and talk to  
11 supervisors and say, okay, do you remember this  
12 specific incident. And we were able to come up with  
13 some documents they had in their files, which we  
14 produced to Mr. Lawrence.  
15 THE Court: Were those files in the personnel  
16 file?  
17 MR. Thompson: No, they were not in the human  
18 resources file.  
19 THE Court: That was what the interrogatory was  
20 addressed to, personnel files, as I recall.  
21 MR. Thompson: That's right, and he did expand  
22 that someone in his third request to produce, but  
23 at this point we have given him everything we know  
24 exists.  
25 THE Court: All right, Mr. Lawrence, your



1 Exhibit C is denied for failure to follow the Local  
2 Rule 7.06, which says you shall file motions to  
3 compel within fifteen days of the offending  
4 discovery.  
5 Exhibit D, dated June the 22<sup>nd</sup>, 2003. God,  
6 please tell me what this is about. It would appear  
7 to me that you're using Rule 26 discovery plan for  
8 an interrogatory; they're not the same thing. Is  
9 that in essence what Exhibit D is?  
10 MR. Lawrence: When I first - - during our first  
11 meeting with the defendant, he said that since I was  
12 pro se, any requests that I would submit to him, he  
13 would honor. And that's the reason why he responded  
14 to the facts that I sent to him as Exhibit F. He  
15 said --  
16 THE Court: I'm on D, I'm not on F yet. We'll  
17 get to F. Let's do D. D is the 26 (f) discovery  
18 plan.  
19 MR. Lawrence: Yes, sir. This was after me  
20 having conversation with him, and talking with him,  
21 and being in the meeting. He said that he will  
22 honor documents that I would send to him in a  
23 request, whether it was faxed, phone conversation.  
24 And this was what - -  
25 THE Court: And did he do it?

1 MR. Lawrence: No, he didn't.  
2 THE Court: What did he not do?  
3 MR. Lawrence: He didn't provide the information  
4 from Mr. Thigpen's file, nor did the other  
5 subsequent information that I stated that was  
6 necessary for the witnesses, in their personnel  
7 files. Those were served to me on the 28<sup>th</sup>, after  
8 the discovery - -  
9 THE Court: 28<sup>th</sup> of what?  
10 MR. Lawrence: November. After the discovery  
11 deadline was over. And this information was  
12 requested back in June and May, and then again in  
13 July. So now that by that time, he could have,  
14 and the company could have responded timely enough  
15 fashion for me to have that information, not  
16 received it on the 28<sup>th</sup> day of November. This is  
17 after the discovery.  
18 THE Court: Mr. Thompson, what do you have to say to  
19 that?  
20 MR. Thompson: Your, Honor, I did tell him,  
21 submit me a request. I didn't - I've been fairly  
22 consistent with him, no verbal, he's got to give me  
23 something in writing. You know --  
24 THE Court: We're going to get to the verbal in  
25 a minute.

1 MR. Thompson: -- Rule 26 discovery plan, as  
2 I've explained to him, is not a request. He did  
3 request some of these personnel files, which I  
4 given him, but there are some names on here that he  
5 never sent me a written request for, other than this  
6 26 (f) plan.  
7 THE Court: Okay. Motion on D denied for  
8 failure to follow Local Rule 7.0b  
9 E, Exhibit E's dated June 10<sup>th</sup>.  
10 MR. Lawrence: Yes, sir. Here again the  
11 plaintiff is asking for information from MR.  
12 Thigpen's file, even into the discovery disclosures.  
13 And as he just mentioned, any document - - he said I  
14 had submitted to him in a document, and this is what  
15 he just told the Court. Well, even up to this  
16 point, this is a document that I submitted to him,  
17 still wasn't honored entirely  
18 THE Court: Have you got it now?  
19 MR. Lawrence: Yes, sir.  
20 THE Court: Okay. E is moot. F, Exhibit F is a  
21 facsimile cover page with almost indecipherable  
22 hieroglyphics thereupon.  
23 MR. Lawrence: Yes, sir.  
24 THE Court: Would you tell be what it says?  
25 MR. Lawrence: It says the following information

1 was excluded from the package of information you  
2 received on 5-14-03. Moreover, I made recent phone  
3 calls to your office requesting a part of -- as a  
4 part of the interrogatories, information from  
5 Westinghouse human resource's file. One, nuclear  
6 material management's division nonexempt employees'  
7 time during the year 2000.  
8 Well, he sent me a disk with downloaded some of  
9 the employees' information.  
10 THE Court: You want all the employees at the  
11 nuclear plant's hours for the year 2000?  
12 MR. Lawrence: Sir - -  
13 THE Court: Is that the translation?  
14 MR. Lawrence: For that division.  
15 THE Court: How many people are in that  
16 division?  
17 MR. Lawrence: Probably about two hundred. But  
18 it's - -  
19 MR. Thompson: We actually gave it to him, Your  
20 Honor.  
21 THE Court: Did you get it?  
22 MR. Lawrence: Yes, sir.  
23 THE Court: On a CD?  
24 MR. Thompson: Yes, sir.  
25 THE Court: Okay.

1 MR. Thompson: But it's done in a composite, so  
2 it's not - - it's not a long drawn out list, big  
3 stack of lists. Then moreover then I said during  
4 the year 2000, such data include medical leave,  
5 vacation, time banked hours, sick days and years of  
6 service.  
7 THE Court: Mr. Lawrence, is that on the CD?  
8 MR. Lawrence: Not - -no, sir, not all of it.  
9 It's just their time showing that they worked and  
10 wasn't there.  
11 THE Court: Where is this information for this  
12 plethora of individuals?  
13 MR. Thompson: What I gave him, Your Honor,  
14 there should be a notation beside each computer  
15 entry. I think what he wants is all the backup  
16 documentation, which is not what he asked for. And  
17 this is not even a request to produce to begin with;  
18 nevertheless, I gave him the information. This has  
19 already been the subject of his first motion to  
20 compel, which was denied.  
21 MR. Lawrence: Your Honor, see, what I'm saying  
22 is in our first meeting he did agree to my requests,  
23 if they were submitted in writing. So I - I'm not  
24 so far in the clouds where I don't understand this  
25 is a lot of information. But he still honored part

1 of it, which let me know he could have honored  
2 the entire request. And not on the day of the 28<sup>th</sup>,  
3 after the discovery's closed  
4 THE Court: All right. Motion denied on the Ma  
5 19<sup>th</sup> - - or 2003 motion, pursuant to Rule 7.06,  
6 untimely.  
7 Now, that disposes of all the matters in your  
8 motion to compel. The time for discovery has  
9 expired there a dispositive motion to be filed  
10 in this case?  
11 MR. Thompson: Yes, Your Honor, I believe the  
12 deadline is today, and I'll file as soon I get  
13 back to the office.  
14 THE Court: All right. You understand what's  
15 going to happen, Mr. Lawrence?  
16 MR. Lawrence: No, sir.  
17 THE Court: They're filing a dispositive motion  
18 to say that you need to be kicked out of court on  
19 summary judgment, because you, for one reason or  
20 another, do not have a case. You will then have  
21 fifteen days from the time you get this motion for  
22 summary judgment, to respond to it.  
23 MR. Lawrence: Okay.  
24 THE Court: I will then make my report and  
25 recommendation without any further hearing.



1 MR. Lawrence: Okay. Also, Your Honor at this  
2 time I talked with the defendant about me  
3 entering - - I have a counsel that I - - that he was  
4 going to file the entry into my case, and then  
5 because we were coming up to the pretrial brief  
6 being required, I filed the motion for an  
7 enlargement of time per Rule 6.  
8 THE Court: When did you do that?  
9 MR. Lawrence: On the 2<sup>nd</sup>. And so you may not  
10 have gotten that as of yet, but that's a motion out  
11 there also. And I did confer with the defendant on  
12 me filing a motion to enlargement of time. And this  
13 will give my--  
14 THE Court: Where did you file that motion?  
15 Where?  
16 MR. Lawrence: In Augusta. No, excuse me  
17 Atlanta.  
18 THE Court: Good. Well, the Southern District  
19 of Georgia will deal with it however the Southern  
20 District of Georgia deals with things. We're in  
21 South Carolina.  
22 MR. Lawrence: Yes, sir.  
23 THE Court: Therefore, it will not get to me.  
24 It must be another case you have going on in  
25 Georgia, because motions in this case have to be

1 filed Aiken, Columbia, Greenville, Rock Hill,  
2 Florence, Beaufort.  
3 MR. Lawrence: Okay. Well, it was submitted for  
4 the Aiken Court, but because I lived in Atlanta,  
5 that's where I filed it.  
6 MR. Thompson: He might mean that's where he  
7 mailed it from.  
8 MR. Lawrence: That's where I mailed it, served  
9 mail from.  
10 THE Court: All right, that's where you mailed  
11 it.  
12 MR. Thompson: Yes, sir.  
13 THE Court: It's not here yet.  
14 MR. Thompson: No, sir.  
15 THE Court: You want an extension of time to do  
16 what?  
17 MR. Thompson: To provide pretrial brief and to  
18 answer his - - his depository submitted to the Court  
19 for dismissal.  
20 THE Court: You've got fifteen days, that's two  
21 and a half - - two weeks. Is that enough time? You  
22 don't - - Do you have a copy of that dispositive  
23 motion with you, or is it here?  
24 MR. Thompson: No, Your honor, I don't.  
25 THE Court: Serve it upon Mr. Lawrence by most

1 expeditious manner you can, including express mail  
2 Federal Express, UPS or all of the above.  
3 MR. Thompson: I'd be happy to do that.  
4 THE Court: All right. You will get it very  
5 soon; probably tomorrow.  
6 MR. Lawrence: Yes, sir.  
7 THE Court: You'll have fifteen days to respond.  
8 Is that sufficient time?  
9 MR. Lawrence: No, sir.  
10 THE Court: Why not?  
11 MR. Lawrence: Because I would have an attorney  
12 entry to help me out.  
13 THE Court: How much time do you need?  
14 MR. Lawrence: At least thirty days, at least.  
15 Because he has gather more of the information and  
16 to write the defense - -  
17 THE Court: Tell me about this lawyer you're  
18 going to hire. Have you hired him?  
19 MR. Lawrence: Yes, well, we've been talking,  
20 and he was waiting - -  
21 THE Court: Wait. That's kind of a yes or no  
22 question. Have you hired him? Or her?  
23 MR. Lawrence: Him.  
24 THE Court: Yes?  
25 MR. Lawrence: Yes.

1 THE Court: Yes.  
2 MR. Lawrence: Yes.  
3 THE Court: Have you paid him? Yes or no?  
4 MR. Lawrence: Consignment. He's working on  
5 consignment basis  
6 THE Court: On consignment basis.  
7 MR. Lawrence: Yes.  
8 THE Court: Okay. So he's on board.  
9 MR. Lawrence: Yes, sir.  
10 THE Court: Is he a South Carolina lawyer?  
11 MR. Lawrence: No, sir.  
12 THE Court: Where does he practice?  
13 MR. Lawrence: In Atlanta.  
14 THE Court: In Atlanta.  
15 MR. Lawrence: Yes, sir, but his firm does have  
16 a bar for South Carolina, and he may file vice hac  
17 also, if not. And I've made him aware that the case  
18 is in South Carolina court.  
19 THE Court: All right. Here's what's going to  
20 happen. You file your response to the dispositive  
21 motion within fifteen days, if you are pro se. If a  
22 lawyer makes an appearance, he will have until  
23 February the 3<sup>rd</sup> in which to file a response. So  
24 of, in fact, you do have a lawyer who is admitted in  
25 this court, then he will have until the 3<sup>rd</sup>. If

1 not, you will have fifteen days. Do you understand?  
2 MR. Lawrence: Yes, sir.  
3 THE Court: Anything else? So that motion, if  
4 and when it gets here, will be marked granted,  
5 conditionally.  
6 MR. Lawrence: Yes, sir.  
7 THE Court: All right. Your motion to compel,  
8 I've already ruled on, each individual item.  
9 Exhibits A, B, C, D, E, and F.  
10 MR. Lawrence: Yes, sir.  
11 THE Court: Anything further?  
12 MR. Lawrence: I have a - - trying to keep - -  
13 keeping track with the pretrial order, I'm also  
14 requesting the submission of the deposition  
15 questions, as opposed to some of the stuff that we  
16 were trying to provide an enlargement of time,  
17 because I did receive - - all my information has come  
18 here late, Your Honor, everything. And so that  
19 means it puts me behind in trying to prepare  
20 pretrial, prepare anything for anybody to come in.  
21 I just received my depositions about two weeks ago.  
22 THE Court: From the court reporter?  
23 MR. Lawrence: From the court reporter.  
24 THE Court: Did you ask her for expedited  
25 MR. Lawrence: I asked, I've asked, and - -

1 THE Court: Did you - - listen to me. Did you  
2 ask her for expedited service to get them?  
3 MR. Lawrence: No, I didn't  
4 HE Court: Okay. In other words, what you want  
5 me to do is to change all the rules around, change  
6 the pretrial order around, let you open up discovery  
7 again. Is that right?  
8 MR. Lawrence: No, sir.  
9 THE Court: What do you want?  
10 MR. Lawrence: I just wanted to be - - in order  
11 for me to prepare and stay within the guidelines of  
12 this Court's scheduling order, I needed certain  
13 information to review and then prepare.  
14 THE Court: You want me to open up discovery  
15 again; is that what you want?  
16 MR. Lawrence: No, sir, not at this point.  
17 THE Court: Okay. That's good, because I'm not  
18 going to do that. We're on target. If you get your  
19 documents and they are relevant to the motion for  
20 summary judgment, then you can include them.  
21 MR. Lawrence: Yes, sir.  
22 THE Court: You can also include affidavit or  
23 affidavits, depending upon how many you have  
24 That's the way you respond to summary judgment. If  
25 your lawyer's admitted to this court, he will know



1 how to do this.  
2 MR. Lawrence: Yes, sir.  
3 THE Court: All right. Now, you, if you're pro  
4 se, have fifteen days.  
5 MR. Lawrence: Yes, sir.  
6 THE Court: If you have a lawyer. February 3rd.  
7 MR. Lawrence: Yes, sir.  
8 THE Court: Anything further?  
9 MR. Thompson: No.  
10 THE Court: Good luck to you.  
11 MR. Lawrence: Okay.  
12 THE Court: You also understand this case has  
13 been reassigned to Judge Floyd.  
14 MR. Thompson: No, I didn't, Your Honor, thank  
15 you. I think I did get a notice, I just have'nt  
16 noted it in the file.  
17 THE Court: Okay. A very delightful judge with  
18 vast experience who sits in Greenville.  
19 MR. Thompson: Thank you, Your Honor.  
20 MR. Lawrence: Can I - - One other question, Your  
21 Honor. Because of the motion that he filed, will  
22 there be any subsequent scheduling order?  
23 THE Court: No, this follows the scheduling  
24 order.  
25 Mr. Lawrence: Okay

1 THE Court: Today is the day he has to file  
2 dispositive motions. He's going to file it today.  
3 MR. Lawrence: Yes, sir.  
4 THE Court: He's on target. He is following the  
5 rules. He has till today to do it.  
6 MR. Lawrence: Yes, sir.  
7 THE Court: Okay?  
8  
9 (Court adjourned at 10:35 a.m.)

1       REPORTER'S CERTIFICATE

2

3   I, Debra L. Potocki, RDR, CRR, court approved  
4   transcriber, certify that the foregoing is a correct  
5   transcript from the official electronic sound  
6   recording of the proceedings in the above – entitled  
7   matter, to the best of my ability.

8

9

10

11

“s/Debra L. Potocki”

12

Debra L. Potocki RMR, CRR

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1 IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF SOUTH CAROLINA

2 CHRISTOPHER LAWRENCE

3 vs

4 WESTINGHOUSE SAVANNAH

5 RIVER COMPANY, LLC 03 - CV - 484

6

7

8 Motion Hearing in the above matter held on

9 Monday, June 14, 2004, commencing at 12:20

10 p.m., before the Hon. George C. Kosko, in the

11 United States Courthouse, 85 Broad Street,

12 Charleston, South Carolina, 29401.

13

14

15 APPEARANCES:

16 CHRISTOPHER LAWRENCE, 2740 Highpoint Road,  
Snellville, GA, appeared pro se.

17 CHARLES F. THOMPSON, JR., ESQ., 1527

18 Blanding Building, Columbia, SC, appeared for  
defendant.

19

20

21 RECORDED BY DENNIS PATRICK, ESR OPERATOR

22 TRANSCRIBED BY DEBRA L. POTOCKI, RDR, CRR  
85 Broad Street, Charleston, SC, 29401

23 843-723-2208

24 Proceedings recorded by electronic sound recording ;

25 Transcript produced by computer-aided transcript

1 The court: This is the case of Christopher  
2 Lawrence versus Westinghouse Savannah River Company,  
3 case number 1:03-484.  
4 There are pending before the court four motions  
5 in this matter; motion by Westinghouse for summary  
6 judgment, motion by Westinghouse to strike notice,  
7 and a motion response filed on February the 11th, a  
8 motion by Westinghouse for sanctions, and a motion  
9 by the plaintiff to dismiss without prejudice.  
10 This case was removed from State Court by the  
11 defendants. The State Court action is the only  
12 complaint in this matter, is that correct?  
13 MR. Lawrence: That's partially correct.  
14 THE COURT: No, sir. Is it correct --  
15 MR. Lawrence: Yes.  
16 THE COURT: - - yes or no ?  
17 MR. Lawrence : Yes , it is.  
18 THE COURT: All right, sir. Mr. Lawrence, I  
19 notice in reviewing your pleadings, that someone who  
20 has been in and around or through or to or graduated  
21 from law school, has been preparing some of these  
22 responses, because the language is that which  
23 attorneys use. However, such attorney has chosen  
24 not to represent you, apparently, because there's  
25 been no appearance made by an attorney. Is that



1 correct ?

2 MR. Lawrence: No, sir.

3 THE COURT: You're doing this all on your own ?

4 MR. Lawrence: I have some associates that I  
5 talk to - -

6 THE COURT: Okay.

7 MR. Lawrence: - - from time to time.

8 THE COURT: So I was correct in my belief that  
9 someone with legal training is advising you.

10 MR. Lawrence: Yes, sir.

11 THE COURT: All right. As I review the  
12 complaint, the only complaint that was filed, it  
13 would appear to me that it does not allege Title VII  
14 issues. It appears a rather straight forward  
15 contract action.

16 This Court, of course, has the power at any time  
17 sua sponte to order the Court - - order the matter  
18 back to State Court, what we call remand. I am not  
19 making a decision on that matter at this time.

20 There is, however, the motion by the plaintiff  
21 to dismiss the case without prejudice. I was  
22 informed that the defendants, through their  
23 pleadings, opposed this motion. I then receive  
24 on - - this morning, a facsimile from the plaintiff,  
25 in which he withdraws his motion to dismiss without

1 prejudice.  
2 I would call both parties' attention to the wire  
3 basket in the well of the courtroom. That  
4 represent the trees that have given their life so  
5 that this case might go forward. This is not a case  
6 deserving of a full file cabinet of paperwork. It  
7 is not that complex a case. It has been made  
8 complex because of the multiple motions, some in  
9 time and some out of time, that have been filed and  
10 then had to be responded to. I find that to be  
11 absolutely a waste of judicial time as well as a  
12 waste of time on behalf of the plaintiff and the  
13 defendant to go through all of this exercise.  
14 So what I am going to do, since the motion to  
15 dismiss has been without prejudice, was not agreed  
16 to by the defendant, and has now been withdrawn by  
17 the plaintiff, I will mark motion number 56 as  
18 withdrawn, or now moot.  
19 I will also deny motions number 49 filed by  
20 Westinghouse for sanctions and to strike the  
21 response, leaving only motion number 40, summary  
22 judgment, as the motion before the Court.  
23 Again I will recite that I am holding - -  
24 withholding my decision as to whether to remand this  
25 matter back to State Court, where it probably should

## APPENDIX I

86A

1 have stayed in the first place, based upon the  
2 allegations in the complaint.  
3 However, if I choose to go forward on the  
4 summary judgment, and issue a report and  
5 recommendation, I want to go forward with an agreed  
6 upon statement of facts. In other words, we are not  
7 going to laboriously cull through those thousands of  
8 pages of documents in that wire basket in order to  
9 determine the kernel of truth which we need to make  
10 a decision.  
11 So in furtherance of that, here is what we're  
12 going to do. Immediately upon completion of this  
13 hearing, counsel for the defendant and the plaintiff  
14 shall confer, and you will agree upon a statement of  
15 undisputed facts. This statement will be - - will  
16 not be argumentative, but will merely state the  
17 facts upon which there is no dispute. This  
18 consultation will be conducted in good faith, and  
19 upon the conclusion of it, the parties will recite  
20 into the record, in this courtroom, those facts  
21 which they agree to, which is to say those facts  
22 which are not in dispute. Only the facts necessary  
23 for this Court to determine the motion for summary  
24 judgment will be included in this statement of  
25 undisputed facts. All the irrelevant material will

1 be excluded. We will deal merely with the facts of  
2 the contract, if there is one; handbook, of which  
3 there is not one; the employment and the  
4 termination.

5 Now, if either of the parties verily believe  
6 that the Court should be made aware of facts which  
7 are contested, that is, facts that are not agreed  
8 upon by the parties, each party shall file with the  
9 Court, no later than 12:01 p.m., Friday, July - -  
10 Friday, June the 18th, a statement of disputed  
11 facts.

12 The statement will follow in this form. One,  
13 each fact shall be separately stated and number.  
14 Two, each fact shall provide a clear reference or  
15 citation to the location of the fact in the  
16 documents that are filed in this case with this  
17 Court. The citation will state the name of the  
18 document, the date it was filed, the page upon which  
19 the fact can be found, and the paragraph number  
20 where it can be located.

21 The statement of facts shall be served upon the  
22 opposing party by such means so as to insure it is  
23 received on or before the filing deadline. You may  
24 accomplish this service either by express mail,  
25 facsimile or email. An affidavit shall be filed

## APPENDIX I

1 thereafter with the Court setting forth the method  
2 of delivery to the opposing party.

3 The person receiving this statement of contested  
4 facts shall have until 12:01 p. m. on Wednesday, June  
5 the 23rd, to file a response to the disputed fact.

6 This document shall follow the same format as I've  
7 mentioned above. The defendant shall resubmit a  
8 brief, arguing the reasons it is entitled to summary  
9 judgment. This brief will be filed on or before  
10 12:01 p.m., Friday, June the 25th, and service shall  
11 be made as I have previously described.

12 The plaintiff shall file a responsive brief to  
13 the defendant's motion for summary judgment on or  
14 before 12 : 01 Friday, July the 2nd.

15 Should the defendant elect to file a reply  
16 brief, it will be filed on or before 12 : 01,  
17 Wednesday, July the 7th. The local civil rules of  
18 civil procedure - - I ' m going to give you an order  
19 with these dates in it.

20 MR. Lawrence: Okay.

21 The Court: The local rules of civil procedure  
22 shall be strictly adhered to, including but not  
23 limited to the length of the briefs. These briefs  
24 will not kill any more trees than are necessary.  
25 Brief means brief; 35 pages maximum, ten pages

1 optimum.

2 In addition, a copy, just the one page of any of  
3 the documents filed with this Court , shall be '  
4 affixed to the brief, which shows a particular fact  
5 upon which you want to argue, outside the agreed  
6 statement of facts.

7 It is anticipated by me that once the two of you  
8 agree that these are the undisputed facts, there  
9 will probably be very few material facts that are in  
10 dispute that need to be addressed. That's why I  
11 think this is going to be a relatively easy  
12 exercise.

13 In other words, I truly believe that having once  
14 brief this matter, that you can rearrange the  
15 brief and resubmit it with almost no additional  
16 effort , except to remove the extraneous, and I do  
17 mean much extraneous material.

18 All right ? Any questions ?

19 MR. Lawrence: Yes, sir.

20 THE Court: Just one second. I want to check  
21 something here. Okay.

22 MR. Lawrence: Yes sir, Your Honor, the  
23 schedule that you just provided to us to conform by,  
24 will I get a breakdown of that so I can follow it  
25 completely ?



1 THE COURT: Mr. Clerk, would you please file my  
2 order. Here are three additional copies. Stamp it  
3 filed and give it to the parties.

4 MR. LAWRENCE: Thank you, sir.

5 THE COURT: Now, I'm going to leave you in this  
6 courtroom with our deputy clerk doing his homework  
7 that he has to do, and you will work together to  
8 come up with this statement of disputed facts. How  
9 are you going to do that? I don't care how you do  
10 it.

11 I will give you a suggestion. It is merely a  
12 suggestion. I would take the defendant's memoranda  
13 in his motion for summary judgment, it has a factual  
14 predicate to it. I would begin at the end of that  
15 on page 11, and work backward to establish the facts  
16 that are agreed upon.

17 For instance, first agreed upon fact, the  
18 lawsuit was filed and served on January 14, 2003.  
19 Yes or no?

20 MR. LAWRENCE: Yes.

21 THE COURT: Good. You've already got agreement  
22 on one issue.

23 The EEOC issued a right to sue letter on  
24 September the 13<sup>th</sup>, 2002. Agreed? Yes or no. Work  
25 backwards from that.

1 Mr. Lawrence, do you have a copy of the  
2 defendant's motion for summary judgment with you?  
3 MR LAWRENCE: Yes sir, I have the information  
4 in my car.  
5 THE COURT: Well, good. I've got extra copies  
6 for you to write upon. You can begin to work, I  
7 backwards is the best way. When you reach  
8 something that you cannot agree upon, confer in good  
9 faith, attempt to resolve it. If you cannot resolve  
10 it, put it aside as a contested fact and move on to  
11 one you can agree upon.  
12 At the conclusion of this discussion, then you  
13 will recite into the record, and I will come back  
14 for it, these undisputed facts. And I will rely  
15 upon those facts, if I decide to issue a report and  
16 recommendation on the summary judgment motion.  
17 Should I decide to remand it, you will merely  
18 get an order from me - - I might add it's a  
19 nonappealable order - - of remand.  
20 All right? Any questions?  
21 MR. THOMPSON: No, Your honor.  
22 THE COURT: Good luck. In case you decide to  
23 get into any kind of fight, this man carries a Glock.  
24 He is an expert marksman, and Fred will shoot  
25 straight.

-

1 MR. THOMPSON: Not even a cross word, Your  
2 Honor.

3 THE COURT: Good.

4 (Court adjourned.)

5 \* \* \*

6 (Court reconvened.)

7 THE COURT: Okay. How are we doing? Have a  
8 seat.

9 MR. THOMPSON: We have a number of facts I think  
10 we've agreed to.

11 THE COURT: Okay. Denny, are you ready to copy  
12 these? Mr. Thompson, you're going to reduce these  
13 to writing after they've been dictated into the  
14 record, correct?

15 MR. THOMPSON: I can do that, yes sir. .

16 THE COURT: Yes, sir, okay.

17 MR. THOMPSON: Plaintiff, Christopher Lawrence,  
18 was first employed by WSRC in 1989.

19 At the time of his employment in 1989, he was  
20 given two years service credit from his prior  
21 employment with Morrison-Knudsen.

22 WSRC assumed the interest of duPont Corporation  
23 when WSRC took over management of the Savannah River  
24 site in 1989.

25 WSRC operates the Savannah River site under a

1 contract with the Department of Energy.

2 The DOE contract requires WSRC to establish  
3 local policies, including personnel policies.

4 WSRC has a personnel policy manual called the 5D  
5 manual.

6 WSRC uses a system of contacts, and that's in  
7 quotes, quote, "contacts," end quote, to document  
8 some interactions between supervisors and  
9 subordinates. These can include disciplinary  
10 contacts. It could also be used to document  
11 something positive the employee did. Or, it could  
12 be used to caution an employee about a management  
13 concern.

14 Other types of disciplinary action used at WSRC  
15 include suspension, probation, final employee  
16 commitment and termination

17 In 1998, Lawrence had a medical absence related  
18 to a bunionectomy. He informed his supervisor he  
19 would be out of work for eight weeks. The WSRC  
20 medical department felt eight weeks was excessive;  
21 however, advised management not to do anything until  
22 Lawrence brought a doctor's note in.

23 Lawrence did bring in a doctor's note that had  
24 working restrictions, but did not address the issue  
25 of return to work.

## APPENDIX I

1 Lawrence also asserted he should not be expected  
2 to come to work because he could not drive a manual  
3 transmission car.

4 In February of 2000, Lawrence's department  
5 suffered a reduction in force. Because of his  
6 seniority, he was allowed to transfer to another  
7 division.

8 By April 2000, Lawrence was warned that  
9 unexcused absences would result in discipline, and  
10 future absences - - I'm sorry, I might have to ask  
11 him - - Did we agree to that or not? Would be  
12 limited to genuine emergencies?

13 MR LAWRENCE: We agreed to that.

14 MR. THOMPSON: Then I have to skip up to July  
15 2000. On July 28, 2000, Lawrence was absent from  
16 work to get blood work done in preparation for a  
17 second bunionectomy

18 When he did return to work, he was excused to go  
19 home by the WSRC medical department because he said  
20 he was being affected by medication.

21 WSRC management and Dr. Botnick documented that  
22 there were concerns - -

23 THE COURT: Doctor who?

24 MR. THOMPSON: Botnick, B-O-T-N-I-CK. He's a  
25 WSRC doctor. And they made documented statements



1 that they were concerned Lawrence's outside business  
2 was interfering with his WSRC employment. Dr.  
3 Botnick made comments to this effect in Lawrence's  
4 medical file,

5 MR. LAWRENCE: Can I add to what we agreed to,  
6 also on that, we also agreed to my employment file,  
7 too, because he made - -

8 MR. THOMPSON: Okay, to the medical and  
9 employment file.

10 Dr. Botnick's position regarding Lawrence's  
11 attendance was negative. After Lawrence went out on  
12 medical leave related to this second operation, Dr.  
13 Botnick began calling Lawrence the week following  
14 his surgery to obtain information about his leave.  
15 Dr. Botnick felt that three weeks leave for the  
16 operation should have been more than sufficient to  
17 recover.

18 Dr. Botnick located Lawrence's personal  
19 physician, and found out that Lawrence was going to  
20 be evaluated on September 7<sup>th</sup>. This would be 2000.

21 On September 11<sup>th</sup>, Lawrence's supervisor, Ralph  
22 Thigpen, T-H-I-G-P-E-N, made calls to Lawrence at  
23 his home, his mother's home and his ex-wife's home  
24 to obtain information regarding his leave.  
25 When the supervisor reached Lawrence, Lawrence



1 said the supervisor was not a doctor, and could not  
2 instruct him to return to work without talking to  
3 Lawrence's doctor.

4 Sometime after September 11<sup>th</sup>, WSRC received a  
5 note from Lawrence's doctor that listed working  
6 restrictions, but did not address whether he could  
7 return - - whether or not he could return to work.

8 Dr. Botnick reached Lawrence on September 12<sup>th</sup>.  
9 Lawrence stated he had not been released by his  
10 physician. The September 11<sup>th</sup> doctor's not given  
11 to WSRC contained only work restrictions.

12 Lawrence told his supervisor he had a medical  
13 excuse until October 3<sup>rd</sup>. WSRC management wanted  
14 the WSRC human relations department to intervene at  
15 this point, because they said they had pushed the  
16 issue as far as they could without guidance.

17 Lawrence did not return to work until September  
18 22<sup>nd</sup>. The day he returned to work, his supervisor  
19 found him asleep. Lawrence stated he was asleep due  
20 to medication.

21 On September 29, Lawrence was placed on  
22 probation.

23 Dr. Botnick did not review at any time  
24 Lawrence's personal physician's medical file;  
25 however, Dr. Botnick did call Lawrence's physician.

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1 on several occasions, and Lawrence did not ever give

2 Dr. Botnick his personal medical records.

3 On August 26, 2001, Lawrence called his

4 supervisor to report he would be late, due to his

5 son's sickness.

6 The next day, August 27, 2001 Lawrence called

7 the WSRC control room to inform WSRC he would be out

8 for two or three additional days to a sinus

9 infection.

10 Lawrence's supervisor, Ralph Thigpen, reported

11 to higher management that Lawrence had disobeyed

12 instructions about whom to contact regarding

13 absences. Thigpen tried to call Lawrence, Lawrence

14 called the supervisor back, they had an angry

15 conversation, during which Lawrence asked, are you a

16 dumb ass? Thigpen also raised his voice during the

17 conversation.

18 WSRC decided to terminate Lawrence's employment.

19 On September 1, 2001, Lawrence was escorted off

20 the site by security personnel. Lawrence's

21 termination form is dated August 30<sup>th</sup>, 2001.

22 Lawrence filed a charge of discrimination on

23 July 19, 2002.

24 The EEOC issued a notice of right to sue on

25 September 13, 2002.

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## APPENDIX I

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1 This lawsuit was filed and served on January  
2 14th, 2003.

3 WSRC has a contractual obligation with DOE to  
4 follow the DOE contract.

5 WSRC has an internal policy labled policy 2.9,  
6 that contains an exit interview procedure. Mr.  
7 Lawrence did not receive the exit interview  
8 procedure.

9 WSRC policy 2.9 contains a checkout procedure.  
10 Mr. Lawrence did not receive the checkout procedure.

11 WSRC has a document which employees have been  
12 required to sign from time to time that lists  
13 conduct an employee can be disciplined for.

14 And finally, there is an order entitled the DOE  
15 order 350.1 that is referred to and incorporated in  
16 the DOE WSRC contract.

17 And those were the facts that we were able to  
18 agree to, Your Honor.

19 THE COURT: Okay. What I did not hear was a  
20 statement as to whether or not the plaintiff was an  
21 at will employee. Is that a fact in dispute?

22 MR. LAWRENCE: It is an at will position, but  
23 altered by the writings of the employee handbook and  
24 DOE contract.

25 The COURT: That's my second question. I heard

1 nothing in there about a handbook. Is there a  
2 handbook?

3 MR. LAWRENCE: By the manual is the - - one of  
4 the manuals by which the contractor, primary  
5 contractor, Westinghouse, was to follow.

6 THE COURT: I heard the word personnel manual.  
7 Is that the same thing as an employee handbook?

8 MR. LAWRENCE: Yes, sir. Can I clarify?

9 MR. THOMPSON: I think that would be an employee  
10 handbook, I regard that as a descriptive term, Your  
11 Honor. It's a policy manual that employees have  
12 access to.

13 THE COURT: The word handbook is used in the  
14 case law extensively as a word of art. Now, if  
15 there is such a handbook that provides an employment  
16 contract between the employee and the defendant, I'd  
17 like to know about it. If there's no such contract,  
18 by virtue of this handbook, I need to know about  
19 that also.

20 MR. LAWRENCE: The 5B manual, WSRC's position  
21 certainly would be, is not a contract of employment.

22 THE COURT: And you say it is a contract of  
23 employment.

24 MR. LAWRENCE: The performance of.

25 The COURT: All right, that will be a subject

1 that needs to be briefed, because it is very  
2 important in employment law, whether it is an  
3 at will employee, or an at will employee who is  
4 governed by the contractual relations established by  
5 a handbook.

6 All right. How many facts are there going to be  
7 in dispute; many or a few?

8 MR. THOMPSON: I would say many, Your Honor.  
9 There are a number of facts concerning his history  
10 of attendance problems that we could not agree.

11 THE COURT: All right.

12 MR. LAWRENCE: As it relates to policy, we  
13 couldn't establish - - Westinghouse has always, since  
14 it's a Government contractor, working for the  
15 Government, has always operated on the guided rule  
16 for order or policy, or during certain specific  
17 times there were no policy in place for consistency  
18 and that is DOE mindset in running this Government  
19 facility for consistency purposes.

20 THE COURT: Are you taking the position you're a  
21 third-party beneficiary of that Government policy?

22 MR. THOMPSON: I think that - -

23 MR. LAWRENCE: Yes.

24 MR. THOMPSON: - - is what he means.

25 THE COURT: Is that an issue in dispute, whether

1 or not he is, in fact, a third-party beneficiary of  
2 a DOE operating procedure?

3 MR. THOMPSON: It would be an issue - - a  
4 disputed issue. I think that's a legal conclusion.

5 THE COURT: I believe it is, too. But the point  
6 is, what are the facts giving rise to it? Are there  
7 factual predicates to it?

8 MR. THOMPSON: I think we have most of those  
9 facts, Your Honor, I think that are the main facts,  
10 we've agreed on. There is such a contract that the  
11 DOE and WSRC, and it does require personnel policy  
12 manual - - personnel policies.

13 MR. LAWRENCE: That incorporates for consistency  
14 of -- from attendance purposes.

15 THE COURT: Then the question becomes, are the  
16 policies, do they rise to the level of a contract.

17 MR. THOMPSON: No, Your Honor, they do not.

18 THE COURT: That's a legal issue but it's based  
19 upon a factual predicate. I look forward to seeing  
20 that in a brief.

21 All right, headway has been made. If you will  
22 reduce those to writing, we will file them, and  
23 there will be no need to further refer to them as  
24 far as the citations go, because those now have been  
25 agreed to as facts. Neither side needs to go any



1 further into that issue. In your briefs, if you  
2 decide to argue disputed facts, then the citations  
3 must be included. You understand what I mean?

4 MR. LAWRENCE: It's what he cites versus --

5 THE COURT: Yes. In both of your briefs, for  
6 instance, you have agreed that the light was red.  
7 If for some reason you want to now say in your brief  
8 the light was yellow, you need to cite the authority  
9 that would prove it was yellow. However, if you're  
10 going to cite in it that it's green, I will accept  
11 that, because you've agreed to the fact that it's  
12 green.

13 That's a very simplistic explanation of what  
14 you've just done. All right? This briefing order  
15 is pretty tight, but I think having written the  
16 briefs once, it will not be difficult for you to  
17 readdress these issues. Anything else?

18 MR. THOMPSON: No, Your Honor, not from us.

19 MR. LAWRENCE: I have one last -- so he will  
20 provide to me the agreements that we just jotted  
21 down, in the form of a brief to the Court?

22 THE COURT: It will be a document saying these  
23 are the agreed facts, and it will agree to what we  
24 have on the tape recording.

25 MR. LAWRENCE: Yes, sir.

1 THE Court: And you will then have that as your  
2 core basis upon which you can write your brief.

3 All right? Anything else? Remember the dates.  
4 You've got a copy of the order. The facts that you  
5 now consider material facts - - I really am not  
6 concerned about what happened to you in 1993,  
7 because I don't believe that is material to what  
8 happened in the year 2000. Unless you think it's  
9 material in some fact, put it in there. In other  
10 words, leave out all the extraneous material. We'll  
11 deal with the current issue.

12 MR. Lawrence: Yes, sir.

13 THE Court: We'll deal with the termination,  
14 we'll deal with the time in which you had from the  
15 time that you got the right to sue to the time you  
16 brought the suit, deal with those issues. You know  
17 what issues he's going raise, all you have to do is  
18 look at his brief.

19 MR. Lawrence: Yes, sir.

20 THE Court: He's laid them out for you in  
21 detail. And likewise, you know what issues he will  
22 respond to. So pretty much ought to be just a one  
23 brief exercise. But if it requires a response,  
24 we'll take a response.

25 All right. Anything further?

1 MR. THOMPSON: No, Your Honor.

2 THE COURT: Good luck to you.

3 MR. THOMPSON: Thank you, sir.

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APPENDIX I

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1     REPORTER'S CERTIFICATION

2

3         I, Debra L. Potocki, RDR, CRR, Court approved  
4 transcriber, certify that the foregoing is a correct  
5 transcript from the official electronic sound  
6 recording of the proceedings in the above-entitled  
7 matter, to the best of my ability.

8

9

10

11         "s/ Debra L. Potocki"

12         Debra L. Potocki, RMR, CRR

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Contract No. DE-AC09-96SR18500



**SAVANNAH RIVER OPERATIONS OFFICE (SR)  
PERFORMANCE EVALUATION AND MEASUREMENT PLAN  
FOR  
WESTINGHOUSE SAVANNAH RIVER COMPANY LLC  
CONTRACT NO. DE-AC09-96SR18500**

**EVALUATION PERIOD:  
October 1, 2000, through September 30, 2006**

\_\_\_\_\_  
**Greg Rudy  
Manager, SR**

**Date** \_\_\_\_\_

## GLOSSARY

**FEE ADMINISTRATOR** - A DOE-SR individual within the Contract Management Division who maintains the official files regarding PBIs, fees and fee payments. The Administrator processes Baseline Change Proposals and all fee payments requiring approval of the Contracting Officer/HCA.

**LESS THAN ACCEPTABLE PERFORMANCE** - Less than acceptable performance shall be considered to exist when: (1) defects exist in a service/product provided and the defects are of such a magnitude to materially affect the form, fit, function, value or usefulness of the service/product; or (2) significant events/defects or adverse trends indicate fundamental and serious programmatic deficiencies exist in the Contractor's management and/or systems.

**PERFORMANCE BASED INCENTIVE (PBI)** - A clear, objective goal that accurately describes and/or defines a task, or event which is a high priority for the site which can be objectively measured. The PBI criteria should be based upon the achievement of cost savings, efficiencies, program achievements, advancements of a major goal and/or event, meeting critical schedule requirements, or be a HQ critical emphasis area. Completion should be entirely within the control of WSRC.

**PERFORMANCE OBJECTIVE** - A category of performance which will be evaluated under a Performance Area. Normally it encompasses the performance of a total function or program.

**PRACTICES** - Activities that are consistent with commercial nuclear industry standards, generally accepted business practices, DOE directives, and/or SR Directive Implementation Instructions (DII), and Federal regulations and requirements.

**SPECIAL PERFORMANCE AREA (SPA)**- SPAs are a subset of a PBI. With SPAS, although clear goals that accurately describe and/or define a task, or event which is a high priority for the site can be established, the work must be evaluated



subjectively, as opposed to objectively, due to the nature of the work involved. Completion should be entirely within the control of WSRC.

**Contract No. DE-AC09-96SR18500 Modification No. M068**

**Part I - The Schedule**

**Section B SUPPLIES OR SERVICES AND PRICES/COSTS**

**B.1 SERVICES BEING ACQUIRED**

The Contractor shall, in accordance with the terms of this Contract, provide the personnel, equipment, materials, supplies, and services (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to providing its best efforts so as to carry out in an efficient and effective manner all necessary and related services to manage and operate the Government-owned Savannah River Site, located near Aiken, South Carolina, as described in Section C, Statement of Work, or as may be directed by the Contracting Officer within the scope of this Contract.

The Work Authorization and Control Process and the Change Control process set forth in Section II of the Savannah River Site (SRS) Management Plan are hereby incorporated and made a part of this contract.

**B.2 ESTIMATED COST AND AVAILABLE FEE**

**(a) Estimated Cost**

The estimated cost of the contract is the total of funding provided from October 1, 1996 to September 30, 2000, which totals \$5,383,459,753.41 plus an estimated budgetary cost of \$8,400,000,000 for the period October 1, 2000 through September 30, 2006, for a total estimated cost of \$13,783,459,753.41.

The above estimated cost excludes any costs for emerging nonproliferation projects and the Estimated Cost for each year of performance shall be established in the Annual Operational Plan which is incorporated into the contract by reference.

**(b) Fee:**

The Maximum Available Fee shall be \$345,000,000 over the

contract term, subject to equitable adjustment as provided for under the terms of this contract. For fiscal years 2002 through 2006, any Comprehensive Performance Special Performance Area (similar to the 2001 SPA) shall range from \$11.5 million to a minimum of \$5 million for any one year, as mutually agreed to by the parties.

The Contractor shall reimburse (by direct reimbursement or by off-sets against PBI payments) the Government for any fee amount drawn down but not earned as a result of fee determinations by the SR Manager/Senior NNSA Official. Any reimbursements due the Government shall be made within 60 calendar days of the date the debt was established or shall be subject to interest as described in the clause in Section I entitled, FAR 52.232-17 Interest (Jun 1996).

### **B.3 AVAILABILITY OF APPROPRIATED FUNDS**

Except as may be specifically provided to the contrary in the Contract Clause entitled "Nuclear Hazards Indemnity Agreement," the duties and obligations of the Government hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the Congress, which the DOE may legally spend for such purposes.

### **B.4 OBLIGATION OF FUNDS**

Pursuant to the Contract Clause entitled "Obligation of Funds," the total amount obligated by the Government with respect to this Contract is \$5,875,769,181.25 (as of Modification No. A067).

## **Part I - The Schedule Section C**

### **DESCRIPTION/SPECIFICATION/WORK STATEMENT**

#### **DESCRIPTION OF WORK AND SERVICES**

##### **STATEMENT OF WORK C.1 OVERVIEW**

The general management goals and objectives for the Savannah River Site (SRS) are outlined in the SRS Strategic Plan required by the Government Performance and Requirements Act. The Plan addresses the environmental stewardship, nuclear weapons stockpile stewardship and nuclear materials stewardship missions which includes the current National Nuclear Security Administration goals and objectives. Performance expectations of this contract are generally defined in the SRS Strategic Plan Focus Areas and specifically defined in the Annual Operational Plan. Both of these documents, and superseding versions thereto, are incorporated by reference into this contract. The Contractor shall safely and cost-effectively implement these management objectives.

a. The Contractor shall integrate and manage the safe and effective operation and maintenance of existing and new facilities of the U.S. Department of Energy (DOE) at the Savannah River Site (SRS), situated within Aiken, Barnwell and Allendale Counties of South Carolina to meet the general management objectives. The Contractor shall use systems engineering techniques to integrate the resources and activities of the SRS. The Contractor is responsible for integrating and executing all work under this contract, including but not limited to, management of its personnel, all components of the Contractor, and all subcontractors at all tiers. The Contractor shall perform in accordance with the terms and conditions herein provided and in accordance with such direction and instruction, which DOE through the Savannah River Operations Office (SR) may provide the Contractor in writing. The Contractor shall implement Departmental requirements including environmental, safety, and health requirements. In the absence of direction and instruction from DOE, the Contractor shall use its

expertise and best commercial practices and industry standards in all matters pertaining to the performance of this contract.

b. The Contractor shall put in place a management team and organizational structure which will enable SRS to reach a position of nationally and internationally recognized applied scientific and engineering excellence. The achievement of enhanced excellence is considered to be the degree to which the capabilities of industry and academia are integrated into the work conducted at SRS using competition as an important driver. The Contractor is expected to benefit from its corporate assets and view the SRS as a national strategic asset to be used in rapidly and effectively applying the results of government and industry sponsored research and development to national problems through privatization and technology transfer.

c. The Contractor shall bring a highly innovative, entrepreneurial and efficient total quality management program to this effort. It shall challenge the status-quo and existing paradigms in formulating and implementing safe, high quality, timely and cost-effective programs and operations at SRS. The Contractor shall use subcontracting (fixed price is preferred when appropriate) and other innovative methods of accomplishing this scope of work. Decisions regarding subcontracting and commercialization initiatives shall be supported through the development of a make-or-buy program emphasizing efficient performance on a least cost basis. The Contractor shall accomplish all work in a manner that minimizes waste and fully complies with all compliance agreements, pollution abatement programs and permit requirements. In accordance with Executive Order 12873 and the DOE Affirmative Procurement Program for Products Containing Recovered Material, the Contractor shall develop and implement a program to make all reasonable efforts to reduce waste and recycle to the maximum extent possible with cost efficiency. In compliance with the federal initiative to "Streamline Procurement Through Electronic Commerce," the Contractor shall to the extent possible, and

within available funding, develop an electronic commerce system that will result in a paperless, automated, and integrated procurement/payment system. Best of class industry baselines should be used to determine and justify staffing requirements as well as cost estimates for maintenance and construction.

d. Safety and environmental awareness must be integrated as core values into all activities. Work must be accomplished in a manner which protects the environment and the safety and health of workers and the public and is in compliance with applicable regulatory and other requirements. The Contractor is expected to identify hazards, manage risks, and identify and implement good management practices site wide and make continued improvements in environment, safety and health (ES&H) performance. The Contractor shall implement recommendations from other organizations (such as the Defense Nuclear Facilities Safety Board and state and federal regulatory agencies) which are accepted by DOE and directed by the Contracting Officer.

## **C.2 ANNUAL OPERATIONAL PLAN**

In addition the general requirements of this Statement of Work, work to be accomplished under this contract is defined for each Fiscal Year in an Annual Operational Plan (AOP). The specific work to be executed under this contract shall be planned, authorized, and controlled using the process and procedures set forth in the DOE SRS Management Plan. This document describes the AOP process under which work, costs/resources, milestones, and other performance measures and criteria are established and controlled. The AOP incorporates and integrates all other work control systems such as Environmental Management Activity Data Sheets and capital project baseline control systems. The SRS Strategic Plan, the SRS Management Plan, the AOP, and all future modifications thereto to these documents, are hereby incorporated into this contract



f. Site Support

(1) Environment, Safety, and Health (ES&H) Support and Assurance Services

The Contractor shall include provisions for the protection of human health and safety and the environment in all activities for which it has contractual responsibilities. The Contractor shall implement and continuously improve the existing ES&H management plan and shall conduct its activities in full compliance with DOE ES&H requirements. The Contractor shall include, as a minimum, the following disciplines as part of the ES&H support and assurance services:

- Occupational, industrial and construction safety;
- Industrial hygiene;
- Occupational medicine;
- Fire protection;
- Nuclear safety (including criticality safety);
- Transportation safety;
- Radiation protection;
- Emergency operations (fire, rescue, emergency medical, hazardous material response) and Emergency preparedness (including coordination with outside agencies);
- Hazardous material management;
- Environmental management and protection (including National Environmental Policy Act, Resource Conservation Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, and Clean Water Act compliance);
- Pollution prevention and waste minimization;
- Lessons learned/root cause analysis management;
- Technical training;
- Operations control (conduct of operations); and
- Radiological assistance to support emergency response in the Southeast.



The Contractor shall implement an ES&H program that not only covers the Contractor's organizations but also other organizations performing work for the Contractor via subcontracts and other agreements at SRS. The Contractor shall work with other Site organizations to ensure consistent ES&H programs are implemented at SRS to realize efficiencies and cost savings for the overall Site. The Contractor shall provide support for any activity on site, as needed, in emergency situations. The Contractor shall also provide ES&H support to others when directed by DOE; this may include activities such as onsite and offsite environmental analysis and assisting in the preparation of required regulatory information.

The Contractor shall implement and maintain a set of requirements to ensure the protection of human health and safety and the environment. In the event, the Contractor becomes out of compliance, appropriate action to protect human health and safety and the environment shall be taken until compliance is reestablished. When activities are not in compliance with appropriate requirements, the Contractor shall accept violation notices.

The Contractor shall work effectively with other site contractors, subcontractors, external regulators, and others (such as the Defense Nuclear Facilities Safety Board, South Carolina Department of Health and Environmental Control, etc.) to maintain and improve ES&H performance at SRS. The Contractor must ensure ES&H excellence in subcontractor performance and flowdown of all applicable requirements to subcontractors. The Contractor shall consider ES&H performance as an evaluation factor in the selection of subcontractors performing work in Government-owned or leased facilities.

The Contractor shall periodically evaluate the ES&H program for effectiveness by using both self and independent assessments, monitor ES&H performance continuously by the use of ES&H performance indicators, and affect continued ES&H improvement in a cost effective manner.

(2) Engineering and Construction

The Contractor shall be the design and construction manager for the SRS. A minimal in-house capability may be maintained to provide limited design and construction services associated with maintenance and repair. The Contractor shall utilize fixed price contracting for design and construction services to the maximum extent practicable. DOE reserves the right to assign management

**Part I - The Schedule**

**Section H SPECIAL CONTRACT REQUIREMENTS**

**H.1 ACCOUNTING FOR PERFORMING ENTITY**

All financial data and planning of the entities identified in the Special Contract clause entitled, Recognition of Performing Entity shall be provided for at the same level of detail required of the prime Contractor. All actual financial data shall be included with the prime Contractor's input to the Financial Information System by the dates established by DOE. Actual manpower data will also be reported in a form and manner acceptable to DOE.

**H.2 ADVANCE UNDERSTANDING ON HUMAN RESOURCES**

(a) Advance Understanding on Human Resources

DOE Order 350.1, "Human Resources Management Program," shall serve as the governing document for the advance understanding. The advance understanding appended to this Contract as Section J, Appendix A, shall as a minimum implement the requirements of this Order.

It is the Department's intent to ensure that the Contractor Human Resource Policies adequately support the Contractor's ability to attract and retain critically skilled employees. Moreover, it is the Contractor's responsibility to notify DOE when any obstacles are encountered that could impact the recruitment and retention of critically skilled employees.

(b) Labor Relations

The Contractor shall maintain positive labor-management relations. The Contractor shall respect the right of employees to self-organize, to form, join or assist the labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and also to have the right to refrain from any or all of such activities. The Contractor shall be obligated to recognize the current bargaining agents and their existing collective bargaining agreements.

### **H.3 AGREEMENT REGARDING PROPOSED CLAUSES**

This contract modification includes clauses which have not been finalized through the formal rule making process. The Department of Energy anticipates promulgation of formal clauses, or revisions to the clauses, contained in this contract modification prior to, or shortly after, the effective date of this modification. Subsequent to such promulgation, the Contractor agrees to negotiate, in good faith, the substitution of these revised clauses for the corresponding existing contract Clauses. Absent material changes to the above clauses in the Final Rule(s) promulgating the clauses which would substantially increase the contractor's financial or corporate risk, the Contractor agrees to accept the final Departmental versions of these clauses.

(a). Section I clauses identified with a publication date of "(Month and Year TBE)" are clauses contained in the March 13, 2000 Federal Register Proposed Rule.

(b) Section I clauses identified with a publication date of "(XXX 2000)" are intellectual property clauses which are being prepared by the Department for release to the public as either a Proposed Rule or an Interim Final Rule.

### **H.4 APPLICATION OF SERVICE CONTRACT ACT TO THE PERFORMING ENTITY**

The Service Contract Act of 1965 (P. L. 89-286) is not applicable to contracts for the operation of DOE facilities. It is however, fully applicable to subcontracts awarded by

contractors operating DOE facilities.

#### **H.5 APPROVAL OF EXPENDITURES**

Whenever approval or other action by the Contracting Officer is required with respect to any expenditure or commitment by the Contractor under the terms of this Contract, the Government shall not be responsible for such expenditures or commitments unless and until such approval or action is obtained or taken.

#### **H.6 ASSUMPTION OF EXISTING AGREEMENTS AND SUBCONTRACTS**

On October 1, 1996, the Contractor assumed responsibility for existing contracts and other agreements from Contract No. DE-AC09-89SR18035. These included: (a) all subcontracts and purchase orders, (b) cooperative research and development agreements, (c) consent orders, (d) regulatory agreements and permits, (e) collective bargaining agreements, (f) site-wide plans (e.g., safety and security plans) and (g) any other agreements in effect prior to execution of this Contract.

#### **H.7 CONFIDENTIALITY OF INFORMATION**

(a) To the extent that the work under this Contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agrees not to

#### **H.9 CONTRACTOR EMPLOYEES/NON-CONTRACT ACTIVITIES**

(a) In carrying out the work under this Contract, the Contractor shall be responsible for the employment of all professional, technical, skilled, and unskilled personnel engaged by the Contractor in the work hereunder, and for the training of personnel. Persons employed by the Contractor shall be and remain employees of the Contractor and shall not be deemed employees of the DOE or the Government; however, nothing herein shall require the establishment of any



employer-employee relationship between the Contractor and consultants or others whose services are utilized by the Contractor for the work hereunder.

(b) The Contractor's employees engaged in the performance of this Contract may remain on the payroll at the Savannah River Site and be used to perform incidental work by the Contractor unrelated to the scope of work of this Contract, provided that: these activities do not interfere with work under this Contract; no costs, expense or liabilities, resulting from the performance of such activities shall be allowable costs under the Contract; and the Contractor shall indemnify and hold harmless DOE against any such liabilities, claims or expenses resulting from such activities. Further, the Contractor shall make advance payment for such activities to the Special Financial Institution Account Agreement For Use With The Payments Cleared Financing Agreement referred to in Appendix B hereof, in manner and amount consistent with applicable DOE financial policies and procedures, as amended, and as determined by the Contracting Officer. Payments so made shall become part of the advances of Government funds as described in the clause entitled "Payments and Advances." The Contractor shall submit to the Contracting Officer a monthly written report on all employees who have been assigned to other than contract work. If the Contracting Officer determines that excessive use of personnel for such purposes has impacted overall contract performance, in addition to other actions or remedies available under the contract, the Contracting Officer may require the Contractor to obtain advance written approval for any such future use of any of the Key Personnel identified in Section J, Appendix D.

(c) The parties recognize that the performance of activities described in paragraph (b) above may result in the generation of records. The parties agree that any records (excluding, records required to determine costs, expenses, or liabilities related to the activities in (b) above), being paid for

out of corporate and not Contract funds are owned by the Contractor and DOE shall have no right to inspect, copy, or audit such records as set forth in the Contract Clause entitled, "Access To And Ownership Of Records."

(j) In regards to Clause H.11 Contract Employees/Non-Contract Activities, it is understood and agreed that the Contractor will continue to maintain in suspense and not collect a portion of its earned fee to which it is otherwise entitled, to satisfy the "advance payment" requirements of this clause.

(k) DOE will support a special incentive compensation plan as an allowable cost subject to satisfying the requirements of DOE Order 350.1. The parties contemplate the allowable cost of the program to approximate \$1 million to \$1.5 million, but the program shall not exceed \$1.5 million per year in allowable costs.

(1) It is the understanding of the parties that the basis for the Environmental Management Program Performance Based Incentives (EM-PBI's) and associated required support functions for the work under this contract is predicated upon a total funding of approximately \$6.6 billion commencing at the start of FY2001 and continuing through the end of FY2006. This funding amount specifically excludes costs for facility safeguards and security, and Salt Disposition Activities in FY2002 - FY2006.

The parties recognize that full achievement of the EM-PBIs incorporated into the contract on the date of execution of this modification, as well as all basic support and program functions as described in the FY 2001 Annual Operational Plan (subject to future change control), are estimated to cost significantly more than \$6.6 billion, and achievement of the EM-PBIs is predicated upon WSRC utilizing its demonstrated past experiences and business acumen to continue to generate cost effective methods and means to complete the work.

It is further understood that funding for Defense Program activities and Materials Disposition activities (including the HEU Blenddown project) will be separately provided for the



National Nuclear Security Administration (NNSA) with related PBIs applicable to specific NNSA areas of interest.

(m) For purposes of the contract clause in Section I entitled, Conditional Payment of Fee, the evaluation periods contemplated shall be six month periods commencing on October 1, 2000. Pending incorporation of the clause discussed below into the contract, the amount of fee subject to reduction under the Conditional Payment of Fee clause shall be the total fee earned plus provisional fee payments made during the six month evaluation period.

(n) As a condition of award of this contract, the contractor has agreed to accept without negotiation, a clause the Department is developing entitled Conditional Payment of Fee, Profit and Other Incentives - Facility Management Contracts (or some similar title). The clause will address, among other issues, fee reductions for various degrees of performance failures relating to environment, safety and health issues as well as safeguarding restricted data and other classified information. The contractor agrees to accept the new clause once promulgated as a Final Rule in the Federal Register and incorporated into the Department of Energy Acquisition Regulation. Under the terms of the new clause, evaluation periods will remain as six month periods.

## **H.12 CORPORATE HOME OFFICE EXPENSES**

(a) For Contractor affiliated sources, the Contractor may obtain direct support from its affiliates and those of the performing entity to meet technical and staffing requirements on an as-needed basis as approved by the Contracting Officer. Contracting Officer approval shall be obtained with DOE's approval of the Contractor's fiscal year Annual Operating Plan (AOP) which will show the anticipated level of affiliate support and document the anticipated level of expertise required from the affiliate. Prior to ordering any support from an affiliate, the Contractor shall either document the "special expertise" required from the affiliate or document support from the affiliate is being

obtained on a "least cost basis" than from other available sources. Any support required beyond the level of support approved in the AOP shall be processed via formal change control procedures. The process and procedure for utilizing support from affiliates shall be approved by the Contracting Officer.

(b) Services from an approved Contractor affiliate will be at cost without additional fee or profit. Allowable cost will include direct costs and all allowable affiliate indirect cost in accordance with applicable DCAA cost principles and cost accounting standards. Temporary assignments of Contractor affiliate personnel to the Savannah River Site or other sites identified in this contract shall bear indirect costs based upon DCAA recommended/approved offsite rate(s) that exclude home office facilities related costs. However, in the event a DCAA recommended/approved offsite rate(s) does not exist for a specific Contractor affiliate, the Contractor affiliate shall not be required to develop an offsite rate unless the temporary assignment exceeds 6 months.

(c) Contractor's affiliates providing such services and personnel shall perform the work in accordance with applicable terms and conditions of this contract.

### **H.13 DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

The Contractor shall conduct activities in accordance with those DOE commitments to the Defense Nuclear Facilities Safety Board (DNFSB) which are contained in implementation plans and other DOE correspondence to the DNFSB. The Contractor shall support preparation of DOE responses to DNFSB issues and recommendations which affect or can affect Contract work. Based on the Contracting Officer's direction, the Contractor shall fully cooperate with the DNFSB and provide access to such work areas, personnel, and information as necessary. The Contractor shall maintain a document process consistent with the DOE manual on interface with the DNFSB. The Contractor shall be accountable for ensuring that

subcontractors adhere to these requirements.

#### **H.14 DISCRIMINATION IN EMPLOYMENT**

The Contractor shall not discriminate against any employee, applicant for employment, or former employee on the basis of age. The Contractor shall comply with the Age Discrimination in Employment Act, with any state or local legislation regarding discrimination based on age, and with all applicable regulations thereunder. Additionally, the Contractor shall comply with all other laws such as, but not limited to, Title VII, 42 U.S.C. Section 2000e, et.seq.

#### **H.15 ENVIRONMENT, SAFETY, AND HEALTH**

The Contract Clause entitled "Integration of Environment, Safety and Health Into Work Planning and Execution" requires the Contractor to develop and implement a Safety Management System. As part of this requirement, the Contractor shall submit to the Contracting Officer, or designee, a document entitled Integrated Safety Management System Description Document that addresses how the Contractor will meet the requirements of this clause. The Contractor will notify the Contracting Officer, or designee, in writing, of any written direction or instruction which contradicts, limits, or compromises those environment, safety, and health requirements. Having already submitted a Description Document for FY2001, the Contractor shall submit an update to the Integrated Safety Management System Description Document each year on September 1 for the following fiscal year. Any changes to the Integrated Safety Management System Description Document after the Contracting Officer's, or designee's, initial approval shall be approved by the Contracting Officer, or designee.

This Contract establishes the agreed-upon safety requirements and other operating parameters for the site-wide operations covered by the contract, except with respect to facilities/activities for which separate Authorization Agreement(s) are necessary. Authorization Agreements are to be used to establish, document, and control the safety

requirements and other parameters for Category 2 nuclear facilities and other facilities as directed by the Contracting Officer to ensure adequate protection of the workers, the public, and the environment. Updates and changes to any approved Authorization Agreements(s) shall be subject to Contracting Officer approval.

#### **1.24. FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

#### **1.25. FAR 52.222-26 EQUAL OPPORTUNITY (FEB 1999)**

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of



\$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) of this clause. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performance of this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to,

- (i) employment;
- (ii) upgrading;
- (iii) demotion;
- (iv) transfer;
- (v) recruitment or recruitment advertising;
- (vi) layoff or termination;
- (vii) rates of pay or other forms of compensation; and
- (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explains this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color,

religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled,



terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

#### **1.26. FAR 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)**

(a) *Definitions.* As used in this clause --

"All employment openings" includes all positions except executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

"Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

"Positions that will be filled from within the Contractor's organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Veteran of the Vietnam era" means a person who —

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and as discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) *General.*

(1) Regarding any position for which the employee or applicant for employment is ~~qualified~~, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as—

- (i) Employment;
- (ii) Upgrading;

- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation;
- and

(viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) *Listing Openings.*

(1) The Contractor agrees to list all employment openings existing at Contract award or occurring during Contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all employment openings with the appropriate office of the State employment service.

(3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive Orders regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound

to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this Contract clause.

(d) *Applicability.*

This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(e) *Postings.*

(1) The Contractor agrees to post employment notices stating—

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other Contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

(f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken

under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

#### **1.27. FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)**

(a) *General.*

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as~

- (i) Recruitment, advertising, and job application procedures;
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- (iii) Rates of pay or any other form of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
- (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue



training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(c) *Postings*

(1) The Contractor agrees to post employment notices stating— (i) The Contractor's obligation under the law to take affirmative action" To employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U. S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the



Secretary issued pursuant to the Act.

(d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

#### **1.28. FAR 52.222-37 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)**

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and by the cognizant contracting officer accompanies the order. In appropriate instances, such as geographical proximity, contractors may obtain discount air fares through a DOE office or a cooperating local travel agency when either a SATO or FTMC is available. Some airlines allow the purchase of discounted airfares with cash or credit card.

(2) In the case of hotel and motel accommodations, reservations may be made by the contractor employee directly with the hotel or motel but the employee must display, on arrival, the letter of identification and any other identification required by the hotel or motel proprietorship.

(3) For car rentals, generally the same procedures as in (d)(2) above will be followed in arranging reservations and obtaining discounts.

(e) Standard letter of identification. Contractors shall prepare for the authorizing contracting officer a letter of identification based on the following format:

**FORMAT FOR GOVERNMENT CONTRACTORS TO**

**QUALIFY FOR TRAVEL DISCOUNTS (TO BE TYPED ON  
AGENCY OFFICIAL LETTERHEAD)**

**To:** (Source of ticketing, accommodations or rental)

**Subject:** Official Travel of Government Contractor

(Full name of traveler), bearer of this letter, is an employee of (company name) which is under contract to this agency under the Government contract (contract number). During the period of the contract (give dates), the employee is eligible and authorized to use available discount rates for contract-related travel in accordance with your contract and/or agreement with the Federal Government.

(Signature, title and telephone number of the Contracting Officer).

**1.81. RESERVED**

**1.82. RESERVED**

**1.83. DEAR 970.5203-1 MANAGEMENT CONTROLS  
(MONTH AND YEAR TBE)**

(a) The contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted by management to reasonably ensure that: the mission and functions assigned to the contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate,

reliable, and timely. The systems of controls employed by the contractor shall be documented and satisfactory to DOE. Such systems shall be an integral part of the contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility. The contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively.

(b) The contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

#### **1.84. DEAR 970.5203-2 PERFORMANCE IMPROVEMENT AND COLLABORATION (MONTH AND YEAR TBE)**

(a) The contractor agrees that it shall affirmatively identify, evaluate, and institute practices, where appropriate, that will improve performance in the areas of environmental and health, safety, scientific and technical, security, business and administrative, and any other areas of performance in the management and operation of the contract. This may entail the alteration of existing practices or the institution of new procedures to more effectively or efficiently perform any aspect of contract performance or reduce overall cost of operation under the contract. Such improvements may result from changes in organization, simplification of systems while retaining necessary controls, or any other approaches consistent with the statement of work and performance measures of this contract.

(b) The contractor agrees to work collaboratively with the Department, all other management and operating, DOE major facilities management contractors and affiliated contractors which manage or operate DOE sites or facilities for the following purposes: (i) to exchange information generally, (ii) to evaluate concepts that may be of benefit in resolving common issues, in confronting common problems, or in reducing costs of operations, and (iii) to otherwise identify and implement DOE-complex-wide management improvements discussed in paragraph (a). In doing so, it shall also affirmatively provide information relating to its management improvements to such contractors, including lessons learned, subject to security considerations and the protection of data proprietary to third parties.

(c) The contractor may consult with the contracting officer in those instances in which improvements being considered pursuant to paragraph (a) involve the cooperation of the DOE. The contractor may request the assistance of the contracting officer in the communication of the success of improvements to other management and operating contractors in accordance with paragraph (b) of this clause.

(d) The contractor shall notify the contracting officer and seek approval where necessary to fulfill its obligations under the contract. Compliance with this clause in no way alters the obligations of the Contractor under any other provision of this contract.

**1.85. DEAR 970.5203-3 CONTRACTOR'S ORGANIZATION (MONTH AND YEAR TBE)**

(a) Organization chart. As promptly as possible after the execution of this contract, the contractor shall furnish to the contracting officer a chart showing the names, duties, and organization of key personnel (see 48 CFR 952.215-70) ~~to be employed~~ in connection with the work, and shall furnish from time to time supplementary information reflecting changes therein.

(b) Supervisory representative of contractor. Unless

otherwise directed by the contracting officer, a competent full-time resident supervisory representative of the contractor satisfactory to the contracting officer shall be in charge of the work at the site, and any work off-site, at all times.

(c) Control of employees. The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be contrary to the public interest, the Government reserves the right to require the contractor to remove the employee.

(d) Standards and procedures. The contractor shall establish such standards and procedures as are necessary to implement the requirements set forth in 48 CFR 970.0371. Such standards and procedures shall be subject to the approval of the contracting officer.

#### **COUNTERINTELLIGENCE (MONTH AND YEAR TRE) DEVIATION**

(a) The contractor shall take all reasonable precautions in the work under this contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 5670.3, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.

(b) The Contractor shall comply with requirements established by the SR Counterintelligence Officer. The SR Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of Contractor employees traveling to foreign



countries or interacting with foreign nationals. The Contractor shall be responsible for requesting defensive Counterintelligence briefings and debriefings of Contractor employees who have traveled to foreign countries or interacted with foreign nationals. The contractor shall coordinate Counterintelligence Awareness training activities with the SR Counterintelligence Officer. The Contractor shall immediately report targeting, suspicious activity and other Counterintelligence concerns to the SR Counterintelligence Officer; and provide assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

**1.87. DEAR 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES (MONTH AND YEAR TBE)**

(a) In performing work under this contract, the contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and Regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the contractor to comply with such law or regulation pursuant to this paragraph.

(b) In performing work under this contract, the contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. Except as otherwise provided for in paragraph (d) of this clause, the contracting officer may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the contracting officer shall notify the contractor in writing of the Department's intent to revise List B



and provide the contractor with the opportunity to assess the effect of the contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the contracting officer's notice, the contractor shall advise the contracting officer in writing of the potential impact of the contractor's compliance with the revised list. Based on the information provided by the contractor and any other information available, the contracting officer shall decide whether to revise List B and so advise the contractor not later than 30 days prior to the effective date of the revision of List B. The contractor and the contracting officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of List B pursuant to the clause of this contract entitled, ""Changes."

(d) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under the clause entitled ""Integration of Environment, Safety, and Health into Work Planning and Execution." When such a process is used, the set of tailored (ES&H) requirements, as approved by DOE pursuant to the process, shall be incorporated into List B as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the contractor shall request an exemption or other appropriate regulatory relief specified in the

regulation.

(d) Except as otherwise directed by the contracting officer, the contractor shall procure all necessary permits or licenses required for the performance of work under this contract.

(e) Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this clause. The contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

## **PART M - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS SECTION J - LIST OF ATTACHMENTS**

### **APPENDIX A - PERSONNEL APPENDIX**

This advance understanding sets forth policies and associated expenses related to Contractor employee practices, relocation expenses, and other costs which have been agreed to by the parties as being reasonable and reimbursable when incurred in the performance of the contract work. Only those items of costs that are set forth herein or specifically referenced in this advance understanding are allowable by reason of advance understanding under this Contract. The failure to include any cost herein shall raise no presumption or inference as to the allowability or non-allowability of such cost.

DOE Order 350.1, "Human Resources Management Program," shall serve as the governing document for this-advance understanding.

The contract terms prior to this modification required the Contractor to obtain DOE approval of certain changes/transactions affecting its Contractor's Procedures Manual 5B (paragraph A below) and its Other Benefit Plans (paragraph G below). Costs associated with any change not approved by DOE as required by the previous contract terms are not covered by this Advance Agreement and there shall be

no presumption or inference as to the allowability or non-allowability of any cost associated with any such unapproved change.

A. Contractor Employee Practices

The Contractor shall implement local policies to ensure cost effective administration of its personnel programs in accordance with the terms of this contract. After the effective date of this modification any major program design change to the Contractor's Procedures Manual 5B, dated 05/06/96, as modified, requires Contracting Officer's approval prior to implementation. In case of conflict between the provisions of this Appendix and the Personnel Manual 5B, this Appendix shall take precedence.

B. Contractor Employee Compensation

The Contractor shall implement its employee compensation program in accordance with its policies and practices as approved by the Contracting Officer. The following specifics shall apply:

1. Compensation Program

3. Individual Compensation Actions

Contracting Officer approval is required prior to reimbursement for initial and proposed changes to base salary for the top official, the deputy top official and only those direct reports to the top official as designated by the Contracting Officer (i.e., the key personnel identified in Appendix D). The Contractor shall provide supporting justification related to internal and external equity as well as individual performance. For each initial compensation or change, the Contractor shall submit the Compensation Approval form, DOE F 3220.5 sufficiently in advance of the proposed effective date of the action. No DOE funds shall be used for an action prior to Contracting Officer approval.

Also, the Contractor shall provide to DOE the semi-annual total earnings report which includes;

- (a) subtotal dollar amounts of base salary and other pay

separately for exempt and nonexempt employees, indicating number of exempt employees and number of nonexempt employees, and

(b) individual compensation by employee name, position and amount (base salary and other pay separately) for each direct report to the top official and individual compensation at \$100,000 and above.

4. Incentive Compensation - The parties agree that no incentive compensation shall be charged to the contract pending agreement on an incentive compensation program which satisfies the requirements of DOE Order 350.1.

5. Exempt Overtime Eligibility - The following Provisions apply to exempt overtime eligibility:

a. All employees in grade 36 and above will be excluded from any overtime benefits.

b. Casual overtime worked by exempt employees will not be compensable.

c. Eligible employees:

(1). All employees working in the capacity of first line supervisor.

(2) All employees performing shift work

(3) All employees approved for extended work schedules.

(4) Rate of overtime pay:

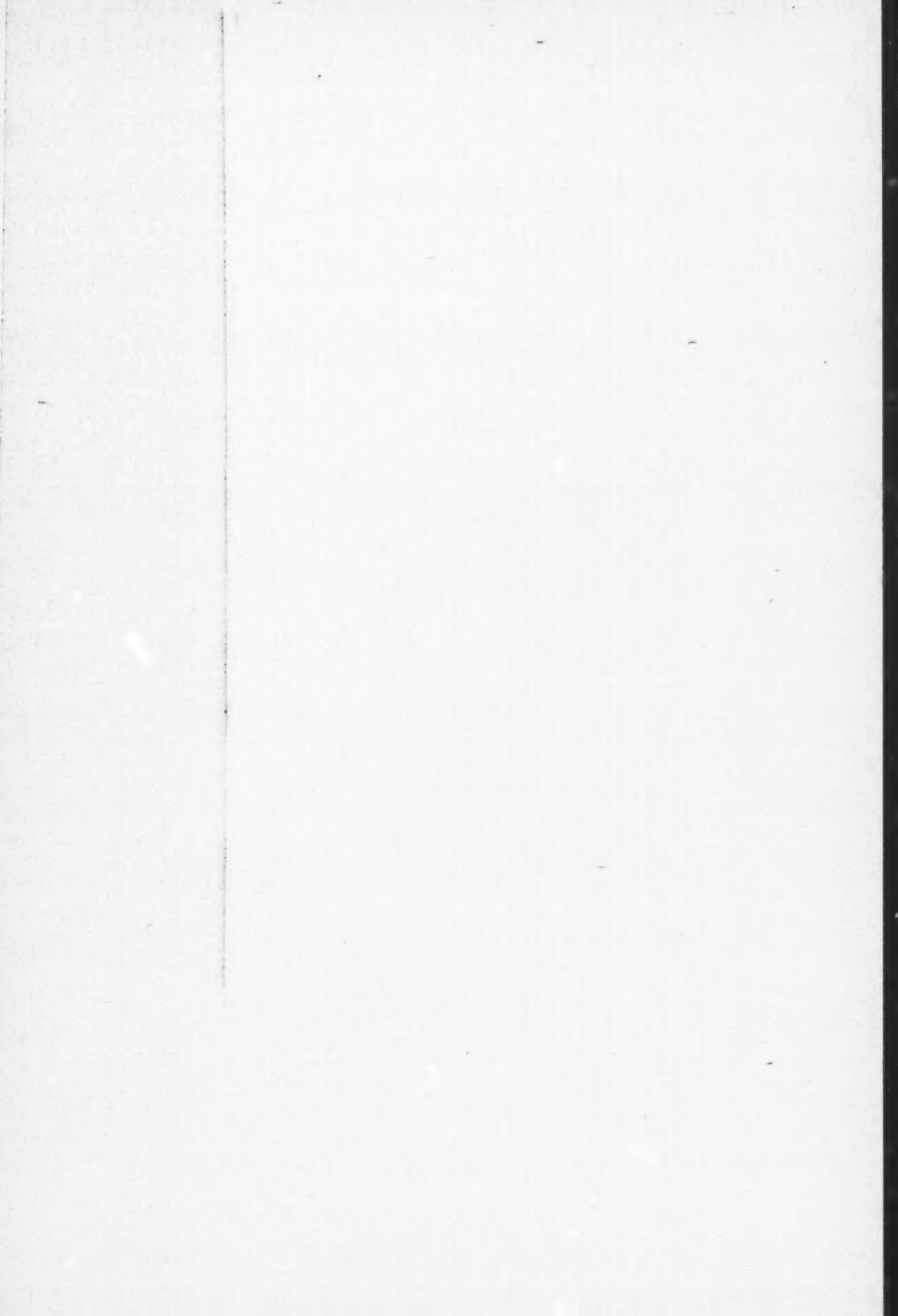
### **PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS SECTION J - LIST OF ATTACHMENTS**

#### **APPENDIX E**

#### **DEAR 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES, LIST B LIST OF APPLICABLE DIRECTIVES**

Pursuant to the LAWS, REGULATIONS, AND DOE DIRECTIVES clause, the contractor shall adhere to the ES&H requirements compliance process delineated in the Site

Standards/Requirements Identification Document (S/RDD). For requirements other than ES&H, the contractor shall, in accordance with the existing SR Directives Management System, adhere to the existing DOE directive requirements that are the basis for established procedures and programs until authorized approvals are obtained to deviate from established requirements. Revised or new requirements shall be forwarded to the contractor by the Contracting Officer or designee via Contract Administrator Notice (CAN) as provided for in DII 251.1.1 A Directives and Compliance System (or superseding versions). DII 251.1.1 A and the S/RID, and superseding versions thereof, are hereby incorporated by reference.





Routing	Initial	Date
HR Representative	<i>[Signature]</i>	10/30/00
Personnel Coordinator	<i>[Signature]</i>	10/30/00
Policy and Practices, 719-A	<i>[Signature]</i>	10/30/00
Benefits and Records, 730-1B		

Westinghouse Savannah River Company

# Constructive Discipline Assessment and Development

## Instructions

- Section 1 If employee is on loan or seconded, manager/supervisor should consult with home department.  
 Section 2 Manager/supervisor should consult with HR Representative regarding the constructive discipline process. Written documentation for follow up is required every two (2) months for employees on probation and every month for employees on FEC. Reasons for Discipline — See WSRC Service Manual 50, Procedures 2.1, and 2.7.  
 Section 3 Manager/supervisor will give a brief summary describing the violation and indicate what disciplinary action will be taken.

Additional Comments—See instructions in the top right hand corner of this form for routing. Note: The original form must be routed

## Section 1 — Employee Information

Name Lawrence, Christopher	Social Security No. 252-27-7614	<input type="checkbox"/> Exempt <input checked="" type="checkbox"/> Nonexempt	Job Title Separation Operator
Home Department NMSS / SLP	Home Org Code SH1514	Loaned/Seconded Dept Org Code N/A	ASD 11/02/1987 PSD 11/02/1998

## Purpose

To provide employees and their manager/supervisor an opportunity to meet, discuss, and document constructive discipline assessment and development opportunities.

## Section 2 — Constructive Discipline Action (Review with HR Manager/Representative)

Effective Date 10/21/2000	Reason For Discipline Individual placed on Probation
------------------------------	---

## Indicate Type of Constructive Discipline or Followup

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Corrective                                  | <input type="checkbox"/> Probation                                  | <input checked="" type="checkbox"/> Probation Followup                           |
| <input type="checkbox"/> Corrective (Remainder of Shift Without Pay) | <input type="checkbox"/> Probation (Remainder of Shift Without Pay) | <input type="checkbox"/> Final Employee Commitment (FEC)<br>(60 Hrs Without Pay) |
| <input type="checkbox"/> Corrective (24 Hrs Without Pay)             | <input type="checkbox"/> Probation (24 Hrs Without Pay)             | <input type="checkbox"/> FEC Followup  |
| <input type="checkbox"/> Corrective (40 Hrs Without Pay)             | <input type="checkbox"/> Probation (40 Hrs Without Pay)             | <input type="checkbox"/> Termination   |

## Section 3 — Summary Assessment Between Employee and Line Management (Additional Space Available on Back)

Chris has maintained a positive attitude since he was placed on probation. He has been reporting early for work and hasn't missed any time as of this date. Instead of sitting around and using his disability to get out of work He has took it upon himself to learn more about the process by helping out in the Control Room. He is currently still on limited duty and cannot actively train in the Facility as of now, but he informed me that he is to see his Doctor on Monday 10/23/00, and may be allowed to return to wearing a shoe. He volunteered to give the Oct. safety meeting to the Shift 11 personnel.

## Section 4 — Recommended Improvement Actions and Specific Mutually Agreed Upon Goals (Additional Space Available on Back)

1. Start actively training in the Sample Arse as soon as medical will allow
2. Continue to report on time for work as scheduled
3. Continue to have a positive attitude

## Section 5 — Employee Comments (Optional) (Additional Space Available on Back)

## Section 6 — Signatures

This Constructive Discipline Assessment and Development has been reviewed and discussed with me. I have been offered the opportunity to include written comments and sign the form. NOTE: Signature does not necessarily signify agreement with this assessment, but documents that a discussion was held. Signature does signify a commitment by the employee. Employee's signature is required when placed on Final Employee Commitment (FEC). Signatures of two levels of management are required.

Employee's Name (Print) <i>Christopher Lawrence</i>	Signature <i>[Signature]</i>	Date 10/24/00
Manager/Line Supervisor Name (Print) <i>Thiaper, William R</i>	Signature <i>[Signature]</i>	Date 10/24/00
Next Highest Level Manager (Level II or FEC) (Print) <i>Steve Williams</i>	Signature <i>[Signature]</i>	Date 10/23/00



## Westinghouse Savannah River Company

## Constructive Discipline Assessment and Development

Routing	Initial	Date
HR Representative	EW	11/29/00
Personnel Coordinator	EB	12/4/00
Policy and Practices, 719-A	W	11/24/01
Benefits and Records, 730-1B		

## Instructions

- Section 1 If employee is on loan or seconded, manager/supervisor should consult with home department.
- Section 2 Manager/supervisor should consult with HR Representative regarding the constructive discipline process. Written documentation for follow-up is required every two (2) months for employees on probation and every month for employees on FEC. Reasons for Discipline — See WSRC Service Manual 5B, Procedures 2.1, and 2.7.
- Section 3 Manager/supervisor will give a brief summary describing the violation and indicate what disciplinary action will be taken.
- Additional Comments—See instructions in the top right-hand corner of this form for routing. Note: The original form must be routed

## Section 1 — Employee Information

Name	Social Security No.	Exempt	Job Title
CHRISTOPHER LAWRENCE	252-27-7614	<input checked="" type="checkbox"/> Nonexempt	SEPARATIONS OPERATOR
Home Department	Home Org Code	Loaned/Seconded Dept Org Code	ALO
NMSS /SEP	SH1514	NA	11/6/1987

## Purpose

To provide employees and their manager/supervisor an opportunity to meet, discuss, and document constructive discipline assessment and development opportunities.

## Section 2 — Constructive Discipline Action (Review with HR Manager/Representative)

Effective Date	Reason For Discipline
11/24/00	FOLLOW UP ON PROBATION

## Indicate Type of Constructive Discipline or Followup

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Corrective                                  | <input type="checkbox"/> Probation                                  | <input type="checkbox"/> Probation Followup              |
| <input type="checkbox"/> Corrective (Remainder of Shift Without Pay) | <input type="checkbox"/> Probation (Remainder of Shift Without Pay) | <input type="checkbox"/> Final Employee Commitment (FEC) |
| <input type="checkbox"/> Corrective (24 Hrs Without Pay)             | <input type="checkbox"/> Probation (24 Hrs Without Pay)             | <input type="checkbox"/> (60 Hrs Without Pay)            |
| <input type="checkbox"/> Corrective (40 Hrs Without Pay)             | <input type="checkbox"/> Probation (40 Hrs Without Pay)             | <input type="checkbox"/> FEC Followup                    |
|  |   | <input type="checkbox"/> Termination                     |

## Section 3 — Summary Assessment between Employee and Line Management (Additional Space Available on Back)

Chris has been on time for his normal scheduled work during this review period except for the one day he was excused by the line Deputy Facility manager S. Williams on 11/9/2000. He is making progress on obtaining his sample aisle qualification which will be the first of three he will be required to have to maintain his 18 paygrade. Chris has maintained a positive attitude and shows alot of initiative in completing all task that are assigned to him.

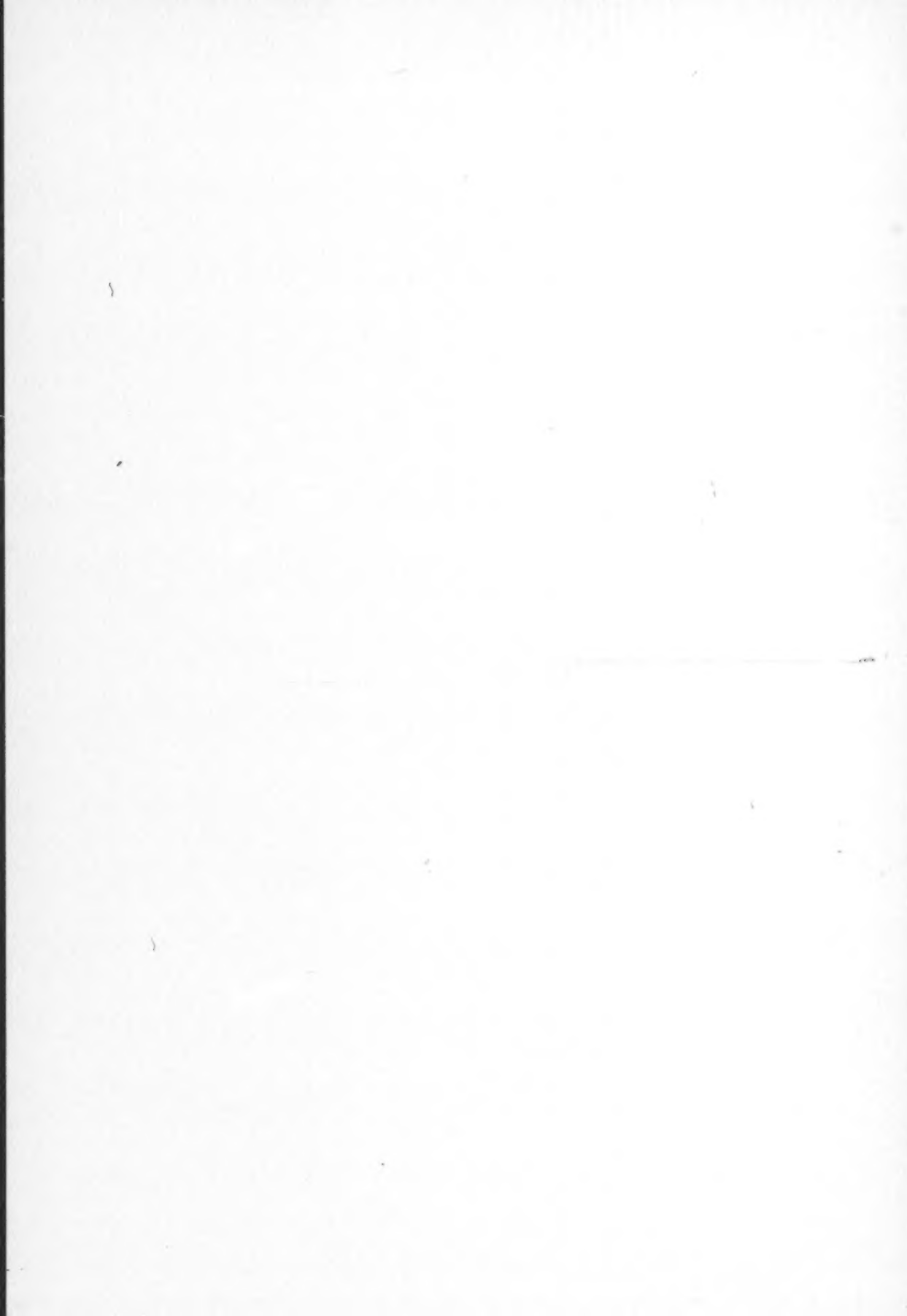
## Section 4 — Recommended Development Actions and Specific Mutually Agreed Upon Goals (Additional Space Available on Back)

## Section 5 — Employee Comments (Optional) (Additional Space Available on Back)

## Section 6 — Signatures

This Constructive Discipline Assessment and Development has been reviewed and discussed with me. I have been offered the opportunity to include written comments and sign the form. NOTE: Signature does not necessarily signify agreement with this assessment, but documents that a discussion was held. Signature does signify a commitment by the employee. Employee's signature is required when placed on Final Employee Commitment (FEC). Signatures of two levels of management are required.

Employee's Name (Print)	Signature	Date
Christopher Lawrence	<i>Christopher Lawrence</i>	11/24/00
Manager/First Line Supervisor Name (Print)	Signature	Date
William R. Huggins Jr	<i>William R. Huggins Jr</i>	11/24/00
Next Higher Level Manager (Level II & FEC) (Print)	Signature	Date
Steve Williams	<i>Steve Williams</i>	11/28/00



Westinghouse Savannah River Company

Constructive Discipline Assessment and Development

Housing	Initials	Date
HR Representative	<i>[Signature]</i>	1/2/01
Personnel Coordinator	<i>[Signature]</i>	1/18/01
Policy and Practices, 719-A	<i>[Signature]</i>	1/24/01
Benefits and Records, 730-1B		

Instructions

- Section 1 If employee is on loan or seconded, manager/supervisor should consult with home department.  
 Section 2 Manager/supervisor should consult with HR Representative regarding the constructive discipline process. Written documentation for follow-up is required every two (2) months for employees on probation and every month for employees on FEC. Reasons for Discipline — See WSRC Service Manual 5B, Procedures 2.1, and 2.7.  
 Section 3 Manager/supervisor will give a brief summary describing the violation and indicate what disciplinary action will be taken.

Additional Comments—See instructions in the top right-hand corner of this form for routing. Note: The original form must be routed.

Section 1 — Employee Information					
Name	Social Security No.		Exempt	Job Title	
Lawrence, Christopher	252-27-7614		<input checked="" type="checkbox"/> Nonexempt	Separation Operator	
Home Department	Home Org Code	Loan/Seconded Dept Org Code		ASD	P50
NMSS/SEP.	SH1514	NA		11/6/1987	11/6/1987

Purpose  
 To provide employees and their manager/supervisor an opportunity to meet, discuss, and document constructive discipline assessment and development opportunities.

Section 2 — Constructive Discipline Action (Review with HR Manager/Representative)	
Effective Date	Reason For Discipline
12/23/2000	Individual placed on probation

Indicate Type of Constructive Discipline or Followup

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Corrective                                  | <input type="checkbox"/> Probation                                  | <input checked="" type="checkbox"/> Probation Followup                        |
| <input type="checkbox"/> Corrective (Remainder of Shift Without Pay) | <input type="checkbox"/> Probation (Remainder of Shift Without Pay) | <input type="checkbox"/> Final Employee Commitment (FEC) (80 Hrs Without Pay) |
| <input type="checkbox"/> Corrective (24 Hrs Without Pay)             | <input type="checkbox"/> Probation (24 Hrs Without Pay)             | <input type="checkbox"/> FEC Followup   |
| <input type="checkbox"/> Corrective (40 Hrs Without Pay)             | <input type="checkbox"/> Probation (40 Hrs Without Pay)             | <input type="checkbox"/> Termination  |

Section 3 — Summary Assessment Between Employee and Line Management (Additional Space Available on Back)

Chris completed his sample aisle training and passed the JPM. He is currently training on second level. He missed 4 days during this month due to an illness which he had a Doctors excuse for and he reported in with medical when he returned.

Section 4 — Recommended Development Actions and Specific Mutually Agreed Upon Goals (Additional Space Available on Back)

1. Continue to progress towards obtaining all qualifications needed to be fully qualified as a building operator.
2. continue to report for all scheduled work
3. Continue to have a positive attitude

Section 5 — Employee Comments (Optional) (Additional Space Available on Back)

Section 6 — Signatures

This Constructive Discipline Assessment and Development has been reviewed and discussed with me. I have been offered the opportunity to include written comments and sign the form. NOTE: Signature does not necessarily signify agreement with the assessment, but documents that a discussion was held. Signature does signify a commitment by the employee. Employee's signature is required when placed on Final Employee Commitment (FEC). Signatures of two levels of management are required.

Employee's Name (Print)	Signature	Date
Christopher Lawrence	<i>[Signature]</i>	12/27/00
Manager/First Line Supervisor Name (Print)	Signature	Date
Willard R. Thigpen	<i>[Signature]</i>	12/27/00
Head Higher Level Manager (Level II or FEC) (Print)	Signature	Date
Steve Williams	<i>[Signature]</i>	1/2/01

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Westinghouse Savannah River Company

## Constructive Discipline Assessment and Development

Routing	Initial	Date
HR Representative	ACS	3/6/01
Personnel Coordinator	ACS	3/8/01
Policy and Practices, 719-A	LA	3/19/01
Benefits and Records, 730-1B		

## Instructions

- Section 1 If employee is on loan or seconded, manager/supervisor should consult with home department.
- Section 2 Manager/supervisor should consult with HR Representative regarding the constructive discipline process. Written documentation for follow-up is required every two (2) months for employees on probation and every month for employees on FEC. Reasons for Discipline — See WSRC Service Manual 5B, Procedures 2.1, and 2.7.
- Section 3 Manager/supervisor will give a brief summary describing the violation and indicate what disciplinary action will be taken.

Additional Comments—See instructions in the top right-hand corner of this form for routing. Note: The original form must be routed.

## Section 1 — Employee Information

Name <b>Lawrence, Christopher</b>	Social Security No. <b>252-27-7614</b>	<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Nonexempt	Job Title <b>building operator</b>
Home Department <b>NMSS/SEP</b>	Home Org Code <b>SH1514</b>	Loaned/Seconded Dept Org Code <b>N/A</b>	ASD <b>11/6/1987</b>
		PSD <b>11/6/1987</b>	

## Purpose

To provide employees and their manager/supervisor an opportunity to meet, discuss, and document constructive discipline assessment and development opportunities.

## Section 2 — Constructive Discipline Action (Review with HR Manager/Representative)

Effective Date <b>2/28/2001</b>	Reason For Discipline <b>Individual placed on Probation</b>
------------------------------------	--

## Indicate Type of Constructive Discipline or Followup

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Corrective                                  | <input type="checkbox"/> Probation                                  | <input checked="" type="checkbox"/> Probation Followup                           |
| <input type="checkbox"/> Corrective (Remainder of Shift Without Pay) | <input type="checkbox"/> Probation (Remainder of Shift Without Pay) | <input type="checkbox"/> Final Employee Commitment (FEC)<br>(80 Hrs Without Pay) |
| <input type="checkbox"/> Corrective (24 Hrs Without Pay)             | <input type="checkbox"/> Probation (24 Hrs Without Pay)             | <input type="checkbox"/> FEC Followup  |
| <input type="checkbox"/> Corrective (40 Hrs Without Pay)             | <input type="checkbox"/> Probation (40 Hrs Without Pay)             | <input type="checkbox"/> Termination   |

## Section 3 — Summary Assessment Between Employee and Line Management (Additional Space Available on Back)

Chris has been progress has been satisfactory in completing his OJT for the Building operator qual. during Jan. and Feb. 2001. I have talked with Chris on numerous occasions since the 1st of the year about managing his SV time wisely. You have used 118.5 hrs. so far this year. You have 81.5 hrs left. Also one of the reasons you were placed on probation for was not keeping your supervision informed on your medical condition. On 2/2/01 at 1915 hrs. I sent you to medical because your back was hurting. Medical released you at 1955 hrs. to report to the emer. room to have a doctor check you out. You did report to the emer. room but only stayed for 40 min. and didn't see a doctor. I called your house and found you at home at 2355 hrs.

## Section 4 — Recommended Development Actions and Specific Mutually Agreed Upon Goals (Additional Space Available on Back)

1. Chris you must keep supervision aware of your medical condition and whereabouts at all times. failure to do so could result in you being placed on FEC.
2. You need to manage your SV time more efficiently than you have so far to keep from having time off without pay
3. you need to continue to progress on your OJT to obtain the necessary quals. for an grade 18 operator

## Section 5 — Employee Comments (Optional) (Additional Space Available on Back)

I FULLY UNDERSTAND THE IMPORTANCE OF ADHIVING SUPERVISION OF MY MEDICAL STATUS. HOWEVER, PREVIOUSLY RELEASED FROM MEDICAL AS SICK, THEY INFORM MY SUPERVISOR OF THE STATUS. NOEDOVER, I DID INFORM MY FLE A ~~THE~~ <sup>AM</sup> OUT THE STATUS FROM HOSPITAL DOCTOR.   
 OK 3-1-01

## Section 5 — Signatures

This Constructive Discipline Assessment and Development has been reviewed and discussed with me. I have been offered the opportunity to include written comments and sign the form. NOTE Signature does not necessarily signify agreement with the assessment, but documents that a discussion was held. Signature does signify a commitment by the employee. Employee's signature is required when placed on Final Employee Commitment (FEC). Signatures of two levels of management are required.

Employee's Name (Print) <b>Christopher Lawrence</b>	Signature <i>Christopher Lawrence</i>	Date <b>3-1-01</b>
Manager/First Line Supervisor's Name (Print) <b>Willard R. Thigpen</b>	Signature <i>Willard R. Thigpen</i>	Date <b>3/1/01</b>
Next Higher Level Manager (Level II if FEC) (Print)	Signature	Date



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# Westinghouse Savannah River Company

## Constructive Discipline Assessment and Development Continued

### Instructions

Indicate the appropriate section heading, such as Summary, Recommended Development Actions, or Employee Comments.

### Employee Information

Name	Social Security No.	Manager/Supervisor Name	Date
Lawrence, Christopher	252-27-7614	Willard R. Thigpen	2/28/2001

### Additional Information

on 2/20/01. When I asked you what you were doing at home and if you had seen a doctor your reply was no that your back was hurting to bad to wait appx. 4 hrs. to be seen. I fully understand your back was hurting and would have probably told you to go home and see a doctor in the morning but you never called when you left H-AREA medical or the emer. room. you did report back to the emer. room after I instructed you to at 0020 hrs. On 2/21/01 and they released you for three days bed rest you failed to keep myself or T. Wood advised of your whereabouts or condition which you must do.

### Signatures

Employee's Name (Print) <i>Christopher Lawrence</i>	Signature <i>Christopher Lawrence</i>	Date <i>3-1-01</i>
Supervisor's Name (Print) <i>Willard R. Thigpen</i>	Signature <i>Willard R. Thigpen</i>	Date <i>3/1/01</i>
Next Higher Level Manager (Level III or FEC) (Print)	Signature	Date



OES 5-3187 (Rev 8-12-96)

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Westinghouse Savannah River Company

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## Constructive Discipline Assessment and Development

Routing	Initials	Date
HR Representative	AKS	4/19/01
Personnel Coordinator	AKS	5/3/01
Policy and Practices, 719-A	Jo	5/18/01
Benefits and Records, 730-1B		

## Instructions

- Section 1 If employee is on loan or seconded, manager/supervisor should consult with home department.
- Section 2 Manager/supervisor should consult with HR Representative regarding the constructive discipline process. Written documentation for follow-up is required every two (2) months for employees on probation and every month for employees on FEC. Reasons for Discipline — See WSRC Service Manual SB, Procedures 2.1, and 2.7.
- Section 3 Manager/supervisor will give a brief summary describing the violation and indicate what disciplinary action will be taken.

Additional Comments—See instructions in the top right-hand corner of this form for routing. Note: The original form must be routed.

## Section 1 — Employee Information

Name Lawrence, Christopher	Social Security No. 252-27-7614	<input type="checkbox"/> Exempt <input checked="" type="checkbox"/> Nonexempt	Job Title building operator
Home Department NMSS/SEP	Home Org Code SH1514	Loaned/Seconded Dept Org Code N/A	ASD 11/6/1987 PSD 11/6/1987

## Purpose

To provide employees and their manager/supervisor an opportunity to meet, discuss, and document constructive discipline assessment and development opportunities.

## Section 2 — Constructive Discipline Action (Review with HR Manager/Representative)

Effective Date 3/28/2001	Reason For Discipline Individual placed on Probation
-----------------------------	---

## Indicate Type of Constructive Discipline or Followup

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Corrective                                  | <input type="checkbox"/> Probation                                  | <input checked="" type="checkbox"/> Probation Followup                           |
| <input type="checkbox"/> Corrective (Remainder of Shift Without Pay) | <input type="checkbox"/> Probation (Remainder of Shift Without Pay) | <input type="checkbox"/> Final Employee Commitment (FEC)<br>(80 Hrs Without Pay) |
| <input type="checkbox"/> Corrective (24 Hrs Without Pay)             | <input type="checkbox"/> Probation (24 Hrs Without Pay)             | <input type="checkbox"/> FEC Followup  |
| <input type="checkbox"/> Corrective (40 Hrs Without Pay)             | <input type="checkbox"/> Probation (40 Hrs Without Pay)             | <input type="checkbox"/> Termination   |

## Section 3 — Summary Assessment Between Employee and Line Management (Additional Space Available on Back)

Chris's progress has been satisfactory in completing his OJT for the Building operator qual. during Mar.2001. He is currently completing his OJT for the 2nd level part of his building qual. and has completed the G.V. portion. He continues to maintain a positive attitude and is managing his time off a little better than he has in the past.

## Section 4 — Recommended Development Actions and Specific Mutually Agreed Upon Goals (Additional Space Available on Back)

1. Chris you must keep supervision aware of your medical condition and whereabouts at all times, failure to do so could result in you being placed on FEC.
2. continue to manage your sv time wisely
3. you need to continue to progress on your OJT to obtain the necessary qual. for an grade 18 operator

## Section 5 — Employee Comments (Optional) (Additional Space Available on Back)

## Section 6 — Signatures

This Constructive Discipline Assessment and Development has been reviewed and discussed with me. I have been offered the opportunity to include written comments and sign the form. NOTE: Signature does not necessarily signify agreement with this assessment, but documents that a discussion was held. Signature does signify a commitment by the employee. Employee's signature is required when placed on Final Employee Commitment (FEC). Signatures of two levels of management are required.

Employee's Name (Print) Christopher Lawrence	Signature <i>Chris Lawrence</i>	Date 3/28/01
Manager/First Line Supervisor's Name (Print) Willard R. Thigpen	Signature <i>Willard R. Thigpen</i>	Date 3/28/01
Next Higher Level Manager (Civil II if FEC) (Print)	Signature	Date





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Westinghouse Savannah River Company

Constructive Discipline Assessment and Development

Routing	Initial	Date
HR Representative	EB	5/9/01
Personnel Coordinator	ALB	5/9/01
Policy and Practices, 719-A	JS	7/11/01
Benefits and Records, 730-1B		

Instructions

- Section 1 If employee is on loan or seconded, manager/supervisor should consult with home department.
- Section 2 Manager/supervisor should consult with HR Representative regarding the constructive discipline process. Written documentation for follow-up is required every two (2) months for employees on probation and every month for employees on FEC. Reasons for Discipline — See WSRC Service Manual SB, Procedures 2.1, and 2.7.
- Section 3 Manager/supervisor will give a brief summary describing the violation and indicate what disciplinary action will be taken.
- Additional Comments—See instructions in the top right-hand corner of this form for routing. Note: The original form must be routed.

Section 1 — Employee Information

Name	Social Security No.	<input type="checkbox"/> Exempt <input checked="" type="checkbox"/> Nonexempt	Job Title
Lawrence, Christopher	252-27-7614		Building Operator
Home Department	Home Org Code	Loaned/Seconded Dept Org Code	ASD PSD
NMSS/SEP	SH-1514	N/A	11/6/1987 11/6/1987

Purpose

To provide employees and their manager/supervisor an opportunity to meet, discuss, and document constructive discipline assessment and development opportunities.

Section 2 — Constructive Discipline Action (Review with HR Manager/Representative)

Effective Date	Reason For Discipline
5/4/2001	individual placed on probation

Indicate Type of Constructive Discipline or Followup

<input type="checkbox"/> Corrective	<input type="checkbox"/> Probation	<input checked="" type="checkbox"/> Probation Followup
<input type="checkbox"/> Corrective (Remainder of Shift Without Pay)	<input type="checkbox"/> Probation (Remainder of Shift Without Pay)	<input type="checkbox"/> Final Employee Commitment (FEC) (80 Hrs Without Pay)
<input type="checkbox"/> Corrective (24 Hrs Without Pay)	<input type="checkbox"/> Probation (24 Hrs Without Pay)	<input type="checkbox"/> FEC Followup
<input type="checkbox"/> Corrective (40 Hrs Without Pay)	<input type="checkbox"/> Probation (40 Hrs Without Pay)	<input type="checkbox"/> Termination

Section 3 — Summary Assessment Between Employee and Line Management (Additional Space Available on Back)

Chris is continuing to progress on his 2nd level portion of his building qualification. He must manage his time bank hours to prevent him from having to request time off without pay which must be approved by a level 2 Manager. He currently has 38 hours left in his time bank for 2001 and 8 months remaining in this year. Chris has the potential to become an excellent operator if he could get his priorities in order.

Section 4 — Recommended Development Actions and Specific Mutually Agreed Upon Goals (Additional Space Available on Back)

1. Manage your time bank hour more effectively to reduce the need of taking time off without pay with the understanding all time off without pay must and will be approved / denied by a level 2 Manager.
2. continue to progress on obtaining your building qualifications which should be completed by this time next month

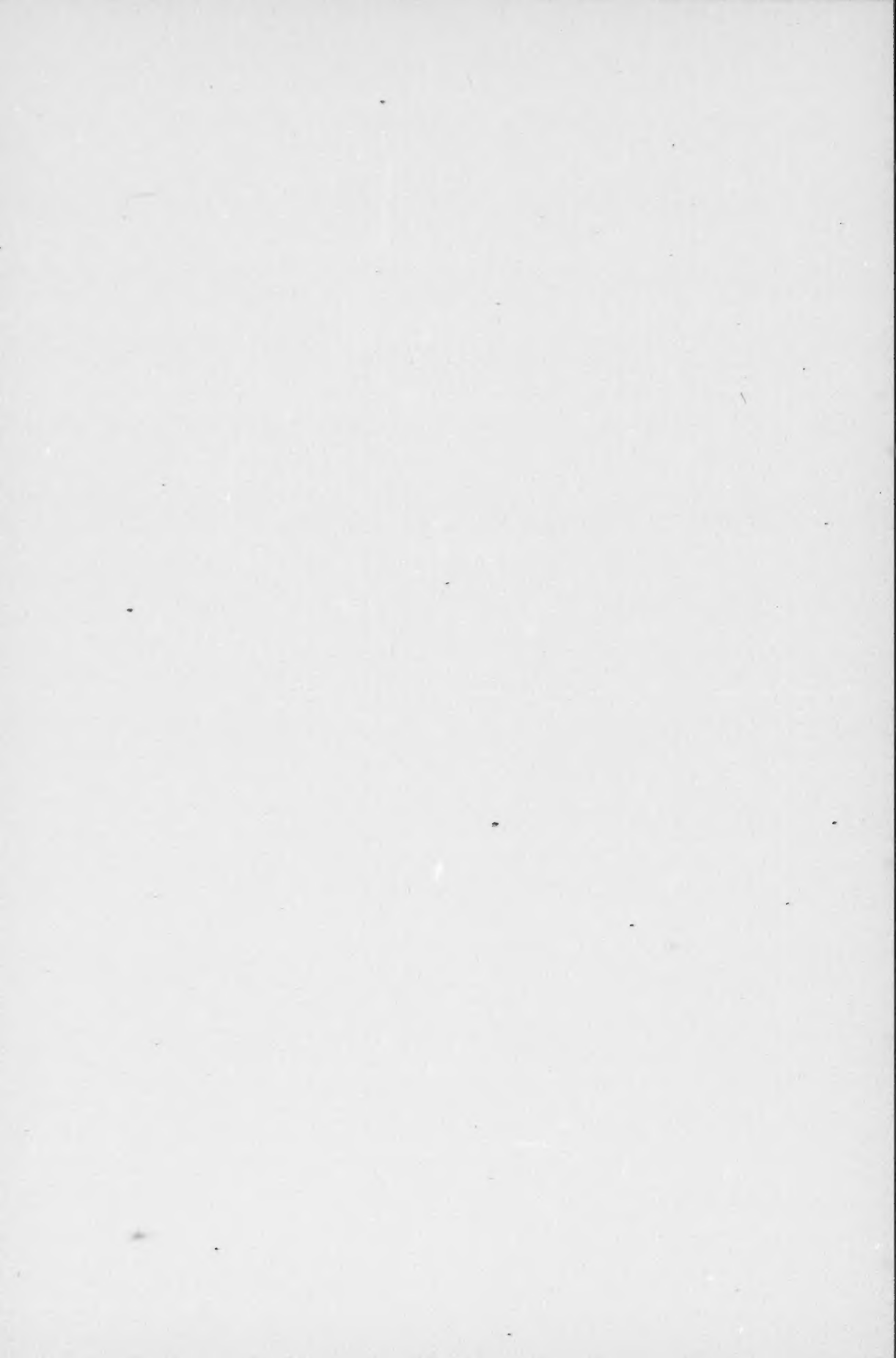
Section 5 — Employee Comments (Optional) (Additional Space Available on Back)

None

Section 6 — Signatures

This Constructive Discipline Assessment and Development has been reviewed and discussed with me. I have been offered the opportunity to include written comments and sign the form. NOTE: Signature does not necessarily signify agreement with this assessment, but documents that a discussion was held. Signature does signify a commitment by the employee. Employee's signature is required when placed on Final Employee Commitment (FEC). Signatures of two levels of management are required.

Employee's Name (Print)	Signature	Date
CHRISTOPHER LAWRENCE	Christopher Lawrence	5/5/01
Manager/First Line Supervisor Name (Print)	Signature	Date
WILLARD R. THIGPEN	Willard R. Thigpen	5/5/01
Next Higher Level Manager (Level II if FEC) (Print)	Signature	Date



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# Constructive Discipline Assessment and Development

Routing	Initial	Date
Representative		
Personnel Coordinator		
Policy and Practices, 719-A		
Benefits and Records, 730-1B		

## Instructions

- Section 1 If employee is on loan or seconded, manager/supervisor should consult with home department.  
 Section 2 Manager/supervisor should consult with HR Representative regarding the constructive discipline process. Written documentation for follow-up is required every two (2) months for employees on probation and every month for employees on FEC. Reasons for Discipline — See WSRC Service Manual SB, Procedures 2.1, and 2.7.  
 Section 3 Manager/supervisor will give a brief summary describing the violation and indicate what disciplinary action will be taken.

Additional Comments—See instructions in the top right-hand corner of this form for routing. Note: The original form must be routed.

## Section 1 — Employee Information

Name LAWRENCE, CHRISTOPHER	Social Security No. 252-27-7814	<input type="checkbox"/> Exempt <input checked="" type="checkbox"/> Nonexempt	Job Title BUILDING OPERATOR
Home Department NMMQ/SEP	Home Org Code SH 1514	Loaned/Seconded Dept Org Code NA	ASD 11/6/1987 PSD 11/6/1987

## Purpose

To provide employees and their manager/supervisor an opportunity to meet, discuss, and document constructive discipline assessment and development opportunities.

## Section 2 — Constructive Discipline Action (Review with HR Manager/Representative)

Effective Date 6/1/2001	Reason For Discipline INDIVIDUAL PLACED ON PROBATION
----------------------------	---

## Indicate Type of Constructive Discipline or Followup:

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Corrective                                  | <input type="checkbox"/> Probation                                  | <input checked="" type="checkbox"/> Probation Followup                        |
| <input type="checkbox"/> Corrective (Remainder of Shift Without Pay) | <input type="checkbox"/> Probation (Remainder of Shift Without Pay) | <input type="checkbox"/> Final Employee Commitment (FEC) (80 Hrs Without Pay) |
| <input type="checkbox"/> Corrective (24 Hrs Without Pay)             | <input type="checkbox"/> Probation (24 Hrs Without Pay)             | <input type="checkbox"/> FEC Followup   |
| <input type="checkbox"/> Corrective (40 Hrs Without Pay)             | <input type="checkbox"/> Probation (40 Hrs Without Pay)             | <input type="checkbox"/> Termination  |

## Section 3 — Summary Assessment Between Employee and Line Management (Additional Space Available on Back)

Chris is making satisfactory progress on obtaining his building quals and should be fully qualified by this time next month. He experienced a slight problem with a level 2 manager concerning our sample delivery procedure this month. It was determined he was doing the right thing but he needs to learn to be more professional when dealing with management. This last incident resulted due to a problem delivering samples a few months back. Chris also needs to allow himself a little more time to make sure he arrives at work on time instead of pushing the envelope of arriving on time or a few minutes late.

## Section 4 — Recommended Development Actions and Specific Mutually Agreed Upon Goals (Additional Space Available on Back)

- You still need to manage your time bank hours to ensure that no time will be taken off without pay and understand a Level 2 manager has to approve any time off without pay
- Learn to be more tactful when dealing with management. Get your FLM involved with any problems you have with management
- Continue to progress in obtaining your building quals and report for work on time as scheduled

## Section 5 — Employee Comments (Optional) (Additional Space Available on Back)

None

## Section 6 — Signatures

This Constructive Discipline Assessment and Development has been reviewed and discussed with me. I have been offered the opportunity to include written comments and sign the form. NOTE: Signature does not necessarily signify agreement with this assessment, but documents that a discussion was held. Signature does signify a commitment by the employee. Employee's signature is required when placed on Final Employee Commitment (FEC). Signature of two levels of management are required.

Employee's Name (Print) Christopher Lawrence	Signature <i>Christopher Lawrence</i>	Date 6/2/01
Manager/First Line Supervisor Name (Print) Willard R. Thigpen	Signature <i>Willard R. Thigpen</i>	Date 6/2/01
Next Higher Level Manager (Level II if FEC) (Print)	Signature	Date

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APPENDIX L

Les Lawrence  
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Constructive Discipline Assessment and Development **COPY**

Routing	Initial	Date
HR Representative	SEB	7/6/01
Personnel Coordinator		
Policy and Practices, 719-A		
Benefits and Records, 730-1B		

## Instructions

- Section 1 If employee is on seconded, manager/supervisor should consult with home department.
- Section 2 Manager/supervisor should consult with HR Representative regarding the constructive discipline process. Written documentation for this process is required every two (2) months for employees on probation and every month for employees on FEC. Reasons for Discipline — See WSRC Service Manual 5B, Procedures 2.1, and 2.7.
- Section 3 Manager/supervisor will give a brief summary describing the violation and indicate what disciplinary action will be taken.

Additional Comments—See instructions in the top right-hand corner of this form for routing. Note: The original form must be routed.

## Section 1 — Employee Information

Name Lawrence, Christopher	Social Security No. 252-27-7614	<input type="checkbox"/> Exempt <input checked="" type="checkbox"/> Nonexempt	Job Title Building Operator
Home Department NM/MD/SEP	Home Org Code SH 1514	Loaned/Seconded Dept Org Code N/A	ASD 11/6/1987 PSD 11/6/1987

## Purpose

To provide employees and their manager/supervisor an opportunity to meet, discuss, and document constructive discipline assessment and development opportunities.

## Section 2 — Constructive Discipline Action (Review with HR Manager/Representative)

Effective Date 7/6/2001	Reason For Discipline Individual placed on Probation
----------------------------	---

## Indicate Type of Constructive Discipline or Followup

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Corrective                                  | <input type="checkbox"/> Probation                                  | <input checked="" type="checkbox"/> Probation Followup                           |
| <input type="checkbox"/> Corrective (Remainder of Shift Without Pay) | <input type="checkbox"/> Probation (Remainder of Shift Without Pay) | <input type="checkbox"/> Final Employee Commitment (FEC)<br>(80 Hrs Without Pay) |
| <input type="checkbox"/> Corrective (24 Hrs Without Pay)             | <input type="checkbox"/> Probation (24 Hrs Without Pay)             | <input type="checkbox"/> FEC Followup  |
| <input type="checkbox"/> Corrective (40 Hrs Without Pay)             | <input type="checkbox"/> Probation (40 Hrs Without Pay)             | <input type="checkbox"/> Termination   |

## Section 3 — Summary Assessment Between Employee and Line Management (Additional Space Available on Back)

Chris completed his JPM for his Building Qual. during this reporting period and is awaiting training to update his records. Chris experienced an illness this month and it is noted that he complied with the terms of his probation within respect to management notifications, etc. Unfortunately due to his illness, Chris has expended all remaining hours in his 2001 Time bank and some time out without pay resulted. As previously communicated, all time off without pay must be approved by a Level 2 Manager (i.e. Facility Manager / Deputy Facility Manager).

## Section 4 — Recommended Development Actions and Specific Mutually Agreed Upon Goals (Additional Space Available on Back)

1. Continue to improve on your Facility knowledge
2. Notify management on anything that prevents you from reporting to work prior to your scheduled time of work.
3. Chris has ZERO time bank hours remaining. He is expected to make every attempt to be at work each and every assigned shift. Any time missed will not be paid as he has exhausted his time bank. All request for time off can only be granted by the Facility Manager, Dave Olson, or the Deputy Facility Manager, Les Sonnenberg

## Section 5 — Employee Comments (Optional) (Additional Space Available on Back)

None

## Section 6 — Signatures

This Constructive Discipline Assessment and Development has been reviewed and discussed with me. I have been offered the opportunity to include written comments and sign the form. NOTE: Signature does not necessarily signify agreement with this assessment, but documents that a discussion was held. Signature does signify a commitment by the employee. Employee's signature is required when placed on Final Employee Commitment (FEC). Signatures of two levels of management are required.

Employee's Name (Print) Christopher Lawrence	Signature <i>Christopher Lawrence</i>	Date 7-6-01
Manager/Supervisor Name (Print) William R. Higgins	Signature <i>William R. Higgins</i>	Date 7/6/01
Next Higher Level Manager (Level II or FEC) (Print)	Signature	Date

WSRC-Lawr64

APPENDIX L





Westinghouse Savannah River Company

# Constructive Discipline Assessment and Development

COPY

Routing	Initial	Date
HR Representative	EB	7/31/01
Personnel Coordinator		
Policy and Practices, 719-A		
Benefits and Records, 730-1B		

## Instructions

- Section 1 If employee is on loan or seconded, manager/supervisor should consult with home department.
- Section 2 Manager/supervisor should consult with HR Representative regarding the constructive discipline process. Written documentation for follow-up is required every two (2) months for employees on probation and every month for employees on FEC. Reasons for Discipline — See WSRC Service Manual 5B, Procedures 2.1, and 2.7.
- Section 3 Manager/supervisor will give a brief summary describing the violation and indicate what disciplinary action will be taken.
- Additional Comments—See instructions in the top right-hand corner of this form for routing. Note: The original form must be routed.

## Section 1 — Employee Information

Name	Social Security No	<input type="checkbox"/> Exempt <input checked="" type="checkbox"/> Nonexempt	Job Title
Lawrence, Christopher	252-27-7614		Building Operator
Home Department	Home Org Code	Loaned/Seconded Dept Org Code	ASD ASD
NMMD / SEP	SEP	N?A	11/6/1987 11/6/1987

## Purpose

To provide employees and their manager/supervisor an opportunity to meet, discuss, and document constructive discipline assessment and development opportunities.

## Section 2 — Constructive Discipline Action (Review with HR Manager/Representative)

Effective Date	Reason For Discipline
7/29/2001	Individual placed on probation

## Indicate Type of Constructive Discipline or Followup

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Corrective                                  | <input type="checkbox"/> Probation                                  | <input checked="" type="checkbox"/> Probation Followup                        |
| <input type="checkbox"/> Corrective (Remainder of Shift Without Pay) | <input type="checkbox"/> Probation (Remainder of Shift Without Pay) | <input type="checkbox"/> Final Employee Commitment (FEC) (60 Hrs Without Pay) |
| <input type="checkbox"/> Corrective (24 Hrs Without Pay)             | <input type="checkbox"/> Probation (24 Hrs Without Pay)             | <input type="checkbox"/> FEC Followup   |
| <input type="checkbox"/> Corrective (40 Hrs Without Pay)             | <input type="checkbox"/> Probation (40 Hrs Without Pay)             | <input type="checkbox"/> Termination  |

## Section 3 — Summary Assessment Between Employee and Line Management (Additional Space Available on Back)

Chris missed a day this month due to one of his children being sick. He has had his training records updated and is now fully qualified as a building operator. Chris needs to have to plan ahead for any medical problems that his children may have to ensure he has someone to care for them and allow him to report for work as scheduled. you must understand that anytime not worked will be without pay and our level 2 Manager must approve it. You must also request this time off prior to your schedule time to report for work to your FLM or SOM.

## Section 4 — Recommended Development Actions and Specific Mutually Agreed Upon Goals (Additional Space Available on Back)

1. Maintain your building qualifications and continue to improve your knowledge of the facility
2. Notify your FLM or SOM on anything that prevents you from reporting for work at the prescribed time.
3. With zero time bank hours you are expected to make every effort to be at work each and every assigned shift
4. All request for time off without pay must be approved by the Facility Manager, Dave Olson or the Deputy Facility Manager, Les Sonnenberg

## Section 5 — Employee Comments (Optional) (Additional Space Available on Back)

## Section 6 — Signatures

This Constructive Discipline Assessment and Development has been reviewed and discussed with me. I have been offered the opportunity to include written comments and sign the form. NOTE: Signature does not necessarily signify agreement with this assessment, but documents that a discussion was held. Signature does signify a commitment by the employee. Employee's signature is required when placed on Final Employee Commitment (FEC). Signatures of two levels of management are required.

Employee's Name (Print)	Signature	Date
Christopher Lawrence	<i>Christopher Lawrence</i>	7/29/01
Witness/First Line Supervisor Name (Print)	Signature	Date
William R. Thiapen	<i>William R. Thiapen</i>	7/29/01
Next Higher Level Manager (Level II if FEC) (Print)	Signature	Date

7/31/01 - Eury

APPENDIX L

Appendix L not required

WSRC-Lawr6



**Procedure Manual 5B Human Resources Policies,  
Practices and Procedures**

**Practice 2.7 Employee Development and Constructive  
Discipline Program**

Rev. 7 05/17/00

Purpose

Scope

Terms and Definitions

Responsibilities

Employees

Human Resources

Human Resources (HR) Review Committee

Managers/Supervisors

Practice

1. Informative Contacts
2. Commendatory Contacts
3. Qualifying or Training Contacts (nonexempts only)
4. Constructive Discipline
  - A. Corrective Contact
  - B. Probation
  - C. Final-Employee Commitment (TEC)
  - D. Termination
5. Processing the Contact
  - A. Recording the Contact
  - B. Distribution of Copies

Records

References

**APPENDIX MA**

## Forms

### Requirements Control System

Procedure Manual 5B, Human Resources

Policies, Practices and Procedures

#### **Procedure Revision Summary**

1. Procedure and Revision # 2.7, Rev 7
2. **Procedure Title:** Employee Development and Constructive Discipline Program
3. **Effective Date** – 05-17-00

#### **4. Procedure Changes Practice:**

1. **Informative Contacts** – revised 1<sup>st</sup> paragraph of section
4. **Constructive Discipline** – revised example in first paragraph

#### **Records** – Revised records Statement

5. Training Requirements: Supervision and employees should become familiar with the new/revised requirements. No additional training is required.

#### **Purpose**

This practice provides guidance on the administration of the Westinghouse Savannah River Company (WSRC) employee constructive discipline program, and the established method for documenting formal discussions between managers/supervisors and employees.

#### **Scope**

The practice applies to all full-service WSRC employees.

When an employee's performance is unsatisfactory, management should take corrective, rather than punitive, action. During the corrective period, the employee should receive specific guidance from manager/supervisor.

### **APPENDIX MA**

Appropriate corrective action could include reassignment or demotion to a job in line with employee's capabilities or taking steps to terminate the individual. Acts of misconduct and willful violations of established policies or procedures may not require a warning to the employee if the matter is deemed sufficiently serious to warrant immediate termination. The correct process should be progressive in nature and commensurate with the seriousness of the case.

This practice does not cover contacts pertaining to fitness for duty. Human Re-sources must be contacted for guidance in cases involving fitness for duty, refer to Procedure Manual 5B, Practice 2.6.

The Personal Assessment and Development Process (PADP), refer to 5B 3.15

### **Terms and Definitions**

Definitions of terms used in this practice are in section 4.3, "Glossary of Terms."

### **Responsibilities**

It is the intent of management to provide guidance and assistance for the development of all employees. This is accomplished by

- building mutual confidence
- communicating strengths and weaknesses
- setting mutually agreed upon performance goals
- correcting unsatisfactory performance

## **APPENDIX MA**

**Employees**

Employees are responsible for working effectively towards meeting the requirements of their positions and must maintain acceptable work performance. The employee must be familiar with and follow WSRC rules,-policies,-and procedures.

**Human Resources**

Human Resources is responsible for the administration and interpretation of this policy. HR is also responsible for maintaining records of employee performance, non performance and any associated disciplinary actions taken.

**Human Resources (HR) Review Committee**

The HR Review Committee is responsible for reviewing and approving constructive discipline actions and consists of:

- line management, including the employee's manager /supervisor

- HR Policy and Procedures

- Equal Employment Operations (EEO)

- HR consultant (represents HR director)

- HR operating division lead/consultant

NOTE: General Counsel will be included in discussions of termination or constructive discipline cases that involve legal matters. Medical Department will be included in discussions of cases involving medical or absenteeism issues.

**Managers/Supervisors**

Managers/supervisors are responsible for

- identifying employee's performance issues

- establishing and communicating standards of performance, policies, goals, and rules of conduct

- providing training to the employee

**APPENDIX MA**



participating in the deliberations of any disciplinary committees called on their personnel

ensuring that documentation or performance assessments and disciplinary actions are transmitted to HR in a timely manner

administering and documenting all contacts promptly, using OSR 5-317, "Employee Information Record," or 5-318, "Constructive Discipline Assessment and Development."

The manager/supervisor provides guidance to the employee on a daily basis. However, documentation of formal discussions is required as described in this procedure. Documentation of a formal discussion is accomplished by completing OSR 5-317 or OSR 5-318 for the following types of contacts:

- informative
- commendatory
- qualifying or training (for nonexempts only)
- constructive discipline
- corrective
- probation-
- final employee commitment (FEC)
- termination

### **Practice**

This practice is divided into 5 sub-practices:

1. Informative Contacts
2. Commendatory Contacts
3. Qualifying or Training Contacts (nonexempts only)
4. Constructive Discipline
5. Processing the Contact

## **APPENDIX MA**

### **1. Informative Contacts**

An informative contact (OSR 5-317) is held to ensure that matters of particular significance are understood by the employee (e.g., safety rules, procedure compliance, WSRC policies, conduct of operations, etc.). This contact is also used as a means of documentation that certain facts are being communicated to the employee (e.g., absentee record, excessive tardiness, loss of government owned or leased property etc.). This contact is not intended to be a part of the constructive discipline program.

An informative contact is maintained in an employee's Personnel Field File and not distributed. All informative contacts are removed from field file and destroyed after one year. If disciplinary action is taken within the one year period on the same subject, the informative contact may be referred to or attached.

### **2. Commendatory Contacts**

A commendatory contact (OSR 5-317) is held at the discretion of the manager/supervisor to document outstanding work performance or achievements. The commendatory contact may be used as supporting documentation for the annual Performance Appraisal (PADP, OSR 5-333) and is also forwarded to division HR to become part of the employee's permanent personnel records.

### **3. Qualifying or Training Contacts (nonexempts only)**

Qualifying or training contacts are conducted during the 180-day qualification period. They are required for new hires, following a lateral transfer or promotion within a seniority unit, or a transfer into a seniority unit. The manager/supervisor should communicate training progress at regular intervals to the employee. The contact may be completed as necessary to document discussions concerning training status and progress.

## **APPENDIX MA**

However, this form (OSR 5-317) must be completed at 60-day intervals for 180 days, or more if necessary.

Similar contacts should be held as necessary for jobs requiring specialized training and demonstrated acquisition of skills beyond the 180-day qualifying period.

Training records should be distributed to the Division HR Personnel Coordinator and forwarded to HR Personnel Records to become part of the employee's permanent records.

#### **4. Constructive Discipline**

Constructive discipline is used when needed to help motivate an employee to recognize responsibilities. This is also used to prompt the employee to comply with site policies, rules, and procedures (e.g., unsatisfactory job performance, attendance, misconduct, improper safeguarding and loss of government owned or leased property, etc.). Prior to initiating constructive discipline, details must be discussed with line management and Human Resources. Mutually agreed upon goals are set to help the employee improve performance. Every effort is made to assist an employee with the improvement program including retraining and supervisory guidance.

In the event of unsatisfactory performance or conduct, managers/ supervisors should clearly understand their right to send an employee home. However, they should listen to the employee's position and document a statement in order to help understand all the facts before doing so. When possible, the HR operating division lead/consultant should interview the employee before sending him or her home.

## **APPENDIX MA**

There are four types of contacts used within the constructive discipline program

- Corrective
- Probation
- Final Employee Commitment
- Termination

### **A. Corrective Contact**

#### **Purpose and Approval**

- A corrective contact is held when an employee's job performance has failed to meet acceptable standards or after a specific incident. Before the corrective contact is held, pertinent facts should be collected and discussed with higher levels of management and the Human Resources representative. The facts should identify the problem areas and seriousness of any specific incident.
- Where the corrective contact is for deteriorating performance, it should be supported by previous documentation such as informative contacts. The object of the corrective contact is to develop a program that will result in improvement.
- The program should be designed so the employee clearly understands why performance is considered substandard and to encourage the employee to improve performance.
- When management determines that a specific incident warrants a corrective contact, the contact is reviewed with the employee.

NOTE: Corrective contacts must be reviewed by the HR lead/consultant before being presented to the employee.

## **APPENDIX MA**

When approved by the HR Review Committee, the employee may be excused from work without pay for

- the remainder of the shift
- 24 hours,
- 40 hours of scheduled work time

**NOTE:** By law, exempt employees are not normally given less than a full week off without *{Fair Labor Standards Act}* pay.

This is specified in the corrective contact. This time is allowed so the employee can consider the seriousness of the incident.

### **Content**

- During a corrective contact, the employee is given every opportunity to explain the actions. A mutual understanding of the situation and events leading to it is reached and an acceptable program is developed to aid in performance improvement or to prevent recurrence of a specific incident.
- The employee should clearly understand why a corrective contact is being given and that the performance record will be placed in the department field file and the employee's personnel file. It is also important that the employee fully accepts the deficiency and makes a commitment to correct the problem. A development program must be outlined in the "Agreed Upon Goals" section of the contact. The employee must understand this is a program to guide performance improvements.

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## **B. Probation**

### **Purpose and Approval**

Probation may be used

- when management determines that an employee's failure to improve unsatisfactory job performance or conduct may result in reassignment, demotion, or termination
- when the employee has failed to respond to other corrective discussions
- as initial corrective action where serious misconduct is involved

Probation must be reviewed by the HR Review Committee.

Before an employee is given a probationary contact, the details of the contact are always discussed with members of higher management. The contact must be approved by the employee's Level 2 manager. The purpose of probation is to

- clearly identify the deficiency or problem and its seriousness
- state what remedial action is required by the employee
- encourage and provide opportunity for corrective effort by the employee
- notify the employee that reassignment, demotion, or termination may be the result of continued unsatisfactory performance or misconduct

When management determines that a specific incident warrants probation, the commitment is reviewed with the employee. The employee may be excused from work with-out pay for remainder of the shift

- 24 hours, or
- 40 hours of scheduled work time

## **APPENDIX MA**



**Note: By law, exempt employees are not normally given less than a full week off without pay.**

- This is specified in the probationary contract. This time is allowed so the employee can make a decision concerning willingness to make a commitment to correct the problem.

### **Content**

When being placed on probation, it should be clearly understood that the employee is being placed on probation for unsatisfactory job performance or misconduct

- the employee's job status is in jeopardy
- the employee is not eligible for promotion or transfer for a minimum of one year

In unusual cases, a transfer may be considered if the nature of the job assignment contributes to the employee's problem and/or management determines a different job assignment substantially improves the employee's chances of overcoming the problem.

The discussion and contact should include a clear statement of deficiencies in job performance or conduct with specific examples. A program for improvement with definite goals should be agreed upon and management should make every effort to assist the employee in meeting these goals. The employee is told that the probation is for a minimum of one year and management will review progress on a monthly basis. When the remedial conditions have been met, the probation may end.

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### **Follow-up**

To ensure that probation accomplishes its purposes, the following actions are required:

- The employee's progress is reviewed by the manager/supervisor with an informal discussion each month and a documented formal discussion (follow-up contact) every two months.
- The discussions include a review of the employee's progress. In cases where progress is satisfactory, the discussion and record may be brief.
- OSR 5-318 is used to record the formal discussions.
- All contacts concerning the employee's status and progress are reviewed by the Level 3 manager.
- Discuss cases where satisfactory progress is not being made with the HR operating division lead/consultant.
- The Level 2 manager decides to end an employee's probationary period, with concurrence of the HR operating division lead/consultant and HR Policy and Procedures.

### **C. Final Employee Commitment (FEC)**

#### **Purpose and Approval**

Final employee commitment may be used when

- an employee's performance has not improved satisfactorily during the probation period and termination may result
- management determines that an incident of serious nature warrants FEC

Final employee commitment must be approved by the HR Review Committee.

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Before an employee is given a final employee commitment contact, the details of the contact are always discussed with members of higher management. The contact must be reviewed by Human Resources Policy and Procedures. The purpose of final employee commitment is to:

- clearly identify the deficiency or problem and its seriousness
- state what remedial action is required by the employee
- encourage and provide opportunity for corrective effort by the employee
- notify the employee that termination may be the result of continued unsatisfactory performance or misconduct

When management determines that the constructive discipline action is a final employee commitment, the commitment is reviewed with the employee. The employee is then excused without pay for a minimum of 80 hours of work time, depending on the severity of the deficiency or problem. The return to work date and time are specified in the FEC contact. This time is allowed so that the employee can make a commitment for continued employment. If an employee prefers to resign rather than make this commitment, the resignation is accepted.

The final employee commitment contact is conducted by the Level 2 manager or designee. The employee's immediate manager/supervisor is present. The employee must sign the contact agreeing to the commitment to take necessary corrective actions. The employee should also understand (written in contact) that failure to keep the commitment may result in termination.

## **APPENDIX MA**

## **Content**

When being placed on FEC, it should be clearly understood that

- the employee is being placed on FEC for continued unsatisfactory job performance or serious misconduct
- the employee's job status is in jeopardy
- the employee is not eligible for promotion or transfer for a minimum of one year.

In some cases, a transfer may be considered if the nature of the job assignment contributes to the employee's problem and management determines a different job assignment substantially improves the employee's chances of overcoming the problem.

The discussion and contact should include a clear statement of deficiencies in job performance or conduct with specific examples. A program for improvement with definite requirements is discussed and management should make every effort to assist the employee in meeting these requirements. Signing of the contact is required and signifies the willingness of the employee to make the effort to meet the requirements. The employee is told that the FEC is for a minimum of one year and management will review progress on a monthly basis. When the remedial conditions have been met the FEC may end.

## **Follow-up**

To ensure that final employee commitment accomplishes its purposes, the following action is required:

- The employee's progress is reviewed by the manager/supervisor with a documented formal discussion (follow-up contact) each month.
- The discussions include review of the employee's progress. In cases where progress is satisfactory, the discussion and record may be brief.
- OSR 5-318 is used to record the formal discussions.

All contacts concerning the employee's status or progress are reviewed by the Level 3 manager.

Cases where satisfactory progress is not being made should be discussed with HR Policy and Procedures.

The Level 2 manager, with concurrence of the HR operating division lead/consultant and HR Policy and Procedures, decides to end an employee's final employee commitment period.

#### **D. Termination**

Document on the performance record form the effective date and reason for termination.

### **5. Processing the Contact**

#### **A. Recording the Contact**

The manager/supervisor summarizes the discussion on performance record form. The write-up is confined entirely to statements of fact and should not offer opinions or assumptions.

If an employee objects to any statements in the write-up, the opposing points of view are recorded by the manager/supervisor or employee in the appropriate section of the form or attached to it.

The employee should read and sign the contact indicating that discussions were held.

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**B. Distribution of Copies**

The original copy of all constructive discipline contacts must be forwarded to the division HR. This document becomes a part of the employee's personnel records. A copy is retained in the department file and the original routed to the Division HR Lead/Rep, Personnel Coordinator (if non-exempt employee), HR Policy and Procedures Group, and forwarded to HR Benefits and Records for retention.

**Records**

Records generated as a result of implementing this procedure are processed in accordance with Procedure Manual IB, MRP 3.31, "Records Management". If employees wish to review their file, they may do so through a request to their manager/supervisor. The manager/supervisor must accompany the employee while reviewing the file.

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### **Procedure Manual 5B Human Resources Policies, Practices, and Procedures**

#### **Procedure 2.9 Termination Practices**

Rev. 6

06/18/01

Purpose

Scope

Terms and Definitions

Responsibilities

- Division Human Resources (HR) Consultant/Lead
- HR Review Committee
- Human Resources
- Level 1 Manager
- Level 2 Manager
- Line Management
- WSRC President

Practice

- 1. Involuntary Termination
  - A. Lack of Work
  - B. Discontinued
  - C. Discharged
- 2. Effect of Termination on Service and Benefits
  - A. Last Day of Service
    - 1. Allowances At Termination

## **APPENDIX MB**

- Termination Procedure
  - A. Initiating Termination Form (OSR 5-8. Change of Status Report)
  - B. Voluntary Termination
  - C. Clearance Checkout
  - D. Pay for Termination Processing Time — Voluntary
  - E. Pay for Termination Processing Time — Involuntary
  - F. Transportation
  - G. Absentee Termination

Records

References

- Requirements Control System

Attachments

**Procedure Manual 5B, *HR Policies,***

***Practices and Procedures* Procedure Revision Summary**

- 1. Procedure and Revision #: |2.9, Rev 6**
- 2. Procedure Title: Termination Practices**
- 3. Effective Date: [6/18/01**
- 4. Procedure Changes**

**Added the followine sentence to section 2, A-2-**

An employee cannot use timebank beyond the last day of scheduled work to extend a termination date. For example, an employee who voluntarily quits will be separated as of the employee's last day worked and timebank will not be approved to extend that date. An employee who is retiring cannot use

## **APPENDIX MB**

timebank to extend the employee's retirement date. Since employees can only retire at the end of the month, they can use timebank or unpaid leave, if they have no remaining itimebank during the month of retirement only.

### **5. Training Requirements:**

As with any procedure revision, those employees affected by the procedure need to familiarize themselves with the ichanges. No additional training is required.

### **Purpose**

This practice establishes requirements and responsibilities for voluntary or involuntary termination of employment from Westinghouse Savannah River Company (WSRC).

### **Scope**

These practices apply to all WSRC employees. Sections that apply specifically to exempt, nonexempt, or selected overtime position (SOP) employees are noted as such.

The following practices are addressed elsewhere in the 5B manual:

- nonexempt seniority and placement, Practice 2.2, "Staffing"
- benefits, Practice 2.18, "Employee Plans and Benefits"
- timebank allowances, Practice 2.19, "WSRC Timebank Plan"

### **Terms and Definitions**

Definitions are in 4.3, "Glossary of Terms."

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## **Responsibilities**

### **Division Human Resources (HR) Consultant/Lead**

The division HR consultant/lead is responsible for reviewing all "Discharge" and "Discontinue" termination cases with the cognizant Level 1 manager before they are submitted to the WSRC president for final approval.

### **HR Review Committee**

The HR Review Committee is responsible for reviewing all discharge and discontinuance cases as presented by the division HR manager and line management in order to support or make recommendations to line management about final disposition.

### **Human Resources**

Human Resources is responsible for

- initiating and sending the termination notice, using the electronic notification network
- preparing the employee termination packet and distributing it to the employee's supervisor/manager
- inputting the employee's information into the Service Center database
- collecting all completed forms and conducting an exit interview with the employee on his/her last day of work (if requested by the employee). If the employee waives the exit interview, waiver must be documented in the employee's personnel file.
- taking possession of the employee's security badge and issuing a temporary pass for the employee to exit the site
- delivering and ensuring the employee's completed termination packet is placed in the employee's personnel file and the employee's badge is delivered to the badge office.

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### **Level 1 Manager**

The Level 1 manager is responsible for reviewing all "Discharge" and "Discontinue" termination cases with the division HR manager before the cases are submitted to the WSRC president for final approval.

### **Level 2 Manager**

Level 2 managers are responsible for authorizing the following terminations

- lack of work
- military service
- pensioned

### **Line Management**

Line management is responsible for

- authorizing terminations categorized as "deceased" or "resigned"
- encouraging employees to give advance notice of termination
- notifying the division HR manager or representative of the intended effective date of a termination

### **WSRC President**

The WSRC president or designee is responsible for approving any "Discharge" or "Discontinue" terminations.

### **Practice**

The practice is divided into 3 subsections:

1. Involuntary Termination
2. Effect of Termination on Service and Benefits
3. Termination Process

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## **1. Involuntary Termination**

### **A. Lack of Work**

Nonexempt full-service employees are terminated for "lack of work" in accordance with 5B, Practice 2.2, when the company has no work available for them.

If an employee not designated to be terminated, volunteers to terminate during a WSRC RIF, the termination is classified as "Lack of Work" rather than "Resignation." Since the termination is voluntary, the employee is eligible only for the benefits accorded a "Resignation," except for service credit, e.g., adjusted service date (ASD), and applicable extension of Group Life Insurance coverage.

NOTE: An employee may elect to take "Lack of Work" termination, with associated benefits, when a demotion due to a RIF would result in a 15% or greater cut in base wages. DOE Contracting Officer approval is required for this option.

### **B. Discontinued**

An employee terminated for causes not warranting discharge is categorized as "Discontinued". Employees are **not** discontinued when reasons for termination warrant discharge. Reasons for discontinuance include:

- extended and unexcused failure to report for work. An employee must be discontinued if such absence exceeds 16 consecutive calendar days. An employee may be terminated as a result of shorter absences if circumstances warrant.
- failure to return from a leave of absence
- total and permanent disability when ineligible for pension

## **APPENDIX MA**



- unsuitability for present work (i.e: medical discontinuance and disqualifying) or other available work
- acts or failures which justify termination and are either involuntary or beyond the employee's control

**Example:** Excessive absenteeism or poor performance due to lack of mental or physical capability rather than to negligence or lack of effort.

When causes for termination are both voluntary and involuntary in nature, line management meets with the division HR manager to carefully assess the individual case and determine the type of termination warranted.

### **C. Discharged**

1. An employee is "Discharged" when his or her job performance or other conduct is unacceptable. Reasons for "Discharge" include, but are not limited to:

- incompetence/substandard job performance
- negligence
- insubordination
- severe or repeated safety and/or security infraction(s)
- dishonesty
- fighting on the job
- horseplay
- gambling
- drinking or being intoxicated on the job
- sleeping on the job
- falsification of records

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- tampering with RC&HP samples, devices, or dosimeters
- unauthorized removal or use of Government property (including computers)
- loss, damage, or misuse of Government property resulting from employee negligence and in
- failing to meet personal responsibility standards
- intentional damage to site, employee, contractor, or vendor property
- excessive absenteeism
- repeated traffic violations

2. Employees are:

- expected to conduct themselves in a non-provocative manner in all WSRC facilities, including the cafeteria, locker rooms, parking lots, etc.
- entitled to their own opinions and beliefs but retain responsibility for comments, actions, or gestures toward other employees that could cause an adverse reaction

3. Employee conduct that can lead to disciplinary action as serious as immediate discharge, include, but are not limited to:

- threat to do bodily harm
- physical, mental, or sexual harassment (assault or abuse)
- abusive, profane, antagonistic, or provocative language directed toward another regarding race, gender, religion, dress, physical appearance, etc.
- Discharge may also be indicated as a result of a series of similar but less serious acts or failures which, after warning, warrant termination. This decision is made jointly by the appropriate Level 2 and division HR managers.

4. If discharge is warranted, the termination is handled as such even though it might be more expedient to discontinue the employee.

## **2. Effect of Termination on Service and Benefits**

### **A. Last Day of Service**

1. In computing pay and benefits, the last day of service is the:

- last day of actual work
- last day of leave of absence
- date of retirement
- date of death

2. Timebank hours remaining or other termination allowances do not extend an employee's length of service beyond the last day of service as listed.

**Example:** An employee who retires December 31 receives timebank allowance for the following year but does not receive service credit for that timebank allowance. See Practice 2.19, "WSRC Timebank Plan."

An employee cannot use timebank beyond the last day of scheduled work to extend a termination date. For example, an employee who voluntarily quits will be separated as of the employee's last day worked and timebank will not be approved to extend that date. An employee who is retiring cannot use timebank to extend his/her retirement date. Since an employee can only retire at the end of the month, he/she can use timebank or unpaid leave, if there is no remaining timebank, during the month of retirement only.

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## **B. Allowances At Termination**

### **1. Timebank**

Timebank allowances at termination are addressed in 5B, Practice 2.19, "WSRC Timebank Plan."

### **2. Military Service**

Termination for military service in excess of 1 year is addressed in 5B, Practice 2.18, "Employee Plans and Benefits." The reason for termination is shown on the Change of Status form (OSR 5-8) as "MS—Military Service." The termination date is the last day of work, even if that date is before the employee actually enters military training or service.

### **3. Pay For Time Spent In Termination Processing**

When management's decision is "Discharge," the employee receives pay for time required to complete onsite termination processing (Medical, RC&HP, Benefits, etc.).

### **4. Health Care Insurance**

The *Employee Benefits Handbook* provides detailed information on how health care and other site insurance plans are affected by an employee's termination. Individuals and managers/supervisors should contact HR Benefits and Records for the most current information and any necessary assistance.

## **3. Termination Procedure**

Advance notice of termination is especially important if an employee terminates with five or more years of company service and is eligible for a deferred pension. Advance notice allows time for preparation of the formal, written notice of deferred pension eligibility given to the employee at termination.

When employees decide to terminate (resign, military service, pension), they submit a letter of termination to their immediate management. This letter states the last day to be worked and the reason for leaving.

When an employee is terminating, management notifies the division HR lead/consultant who notifies the division HR Service Center.

**A. Initiating Termination Form (OSR 5-8, Change of Status Report)**

Management and Human Resources initiate an OSR 5-8 for each terminating employee.

**B. Voluntary Termination**

The cognizant HR Lead/Rep:

- completes a Change of Status (OSR 5-8)
- issues electronic notification of termination using an e-mail standard distribution list (indicate "Official Use Only" on electronic document)
- issues the terminating employee a termination package and a checkout sheet, including instructions on the out-processing procedure.

The employee completes the termination package, including checkout sheet, and brings it to HR for the final review on the last day of work.

**C. Clearance Checkout**

1. At the time termination processing is begun, management: reclaims all temporary passes and permits

- verifies and ensures proper disposition of classified documents or materials and secures clearance from Document Control, when needed
- ensures that the employee turns in issued safety-equipment, tools, keys, or any other site property
- ensures that signature authority, cipher codes and all other non-tangible permissions are revoked

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schedules a whole body count or fast scan for the employee at Building 735-4A. This process requires about 40 minutes and is normally completed a few days before termination. It is not necessary if the employee was never assigned where radioactive materials we represent.

- ensures that personnel who have been assigned, at any time during WSRC employment, to work in areas where radioactive materials were present submit a bioassay sample (preferably 500 ml) to Radiological Control Operations Department. Ask RCO Management any questions regarding what personnel are required to submit bioassay samples.
- APPENDIX MB
- makes onsite and offsite transportation arrangements for the person terminating when necessary
- scheduling the terminating employee with the appropriate area Medical station for medical clearance. Medical clearance can be handled at Building 719-A if clearing through the Area Medical is not possible. However, advance notice must be given to 719-A Medical so that the employee's Area Medical folder may be reviewed.
- sends the terminating employee to HR Employment for final termination processing
- ensures reconciliation of imprest funds, accounts (cash account) for which employee is responsible

2. Special handling is required for discharge and discontinuance cases. Employees being discontinued or discharged must be escorted by their management until the termination process is complete. Security personnel may be requested for support if situation warrants precautionary measurements.

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### 3. Exit Interviews

An exit interview is conducted and documented by the division HR Lead/Rep if requested by the employee. The interview deals with the employment relationships of the terminating employee. The documentation is placed in the terminating employee's file.

### **D. Pay for Termination Processing Time — Voluntary**

1. Each employee, regardless of their regular shift schedule, must physically process through HR on Day Shift, Monday through Friday.
2. A nonexempt or SOP employee who terminates voluntarily and properly processes out through HR and Medical receives a termination allowance equivalent to three hours straight-time pay at base rate, or for actual time worked, whichever is greater.
3. Normally, the time record for the employee shows, for the day of termination, five hours' work and a three-hour allowance for termination processing.
4. Each nonexempt employee processing through HR and Medical during the Day Shift receives wages:
  - Enter a termination notation, under "Comments," on the timecard.
  - Management approves the time record.
  - Management submits a timebank schedule with the final time record when a terminating employee is eligible for timebank allowance. Clearly mark the schedule "Timebank Allowance," showing the number of timebank hours due.

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#### 5. While Working Day Shift

A nonexempt employee who terminates while working the day shift performs regular work up to the time necessary to start the termination processing. This means reporting for processing on the day of termination, no earlier than 1 p.m.

#### 6. Outside of Regular Work Schedule

A shift employee who reports for termination clearance during non-scheduled work hours or remains for clearance after having worked the 12-8 shift receives the termination processing pay in addition to any pay received for work performed during regular shift on that day (including premium pay).

7. The final check for terminating employees is mailed following the normal pay period for that employee.

### **E. Pay for Termination Processing Time — Involuntary**

#### 1. Discharged Employee

A discharged employee, regardless of shift assignment, is terminated on Day Shift. This does not prevent management from sending an employee home during the employee's regular shift to await final disposition.

A discharged employee is paid for the actual time required for physically processing through HR and Medical, including overtime payment. Management arranges with Payroll for the employee to receive full wages prior to leaving the site. If this is not accomplished, remaining wages are paid in the next pay period.

#### 2. Discontinued Employee

A discontinued employee is paid a 3-hour termination allowance or for actual time worked, whichever is greater.

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### **3. Employee Terminated for Lack of Work**

An employee terminated for lack of work processes out through HR and WSRC Medical during Day Shift, Monday through Friday.

The schedule of a shift employee is changed as necessary to permit termination while working Day Shift. The change is made to avoid paying premium pay.

An employee terminated for lack of work is paid in the same manner as one who terminates voluntarily, unless the computed termination payment is less than the amount of pay to which the employee is entitled for actual time required in termination processing. In this case pay is in accordance with subsection 3-E.2.

### **F. Transportation**

A voluntarily terminating employee is expected to provide his or her own transportation between the area and the location where paperwork will be completed on the day of termination. A discharged or discontinued employee is escorted through the termination process.

When employee is involuntarily terminated, discharged or discontinued, without prior notice, management assists with arranging transportation. Transportation is provided, when necessary, to the barricade nearest to the employee's home at the end of the termination process.

### **G. Absentee Termination**

#### **1. With Notice**

When an employee terminates by letter or other notice, the department notifies the division HR lead/consultant, listing site property issued to the employee which must be returned.

Human Resources completes OSR 5-8, "Change of Status," and forwards it to HR Employment. HR also sends out the standard termination notice, via electronic mail, to the appropriate distribution.

## **APPENDIX MB**

HR processes and distributes OSR 5-8, and prepares a certified letter, with a copy to Safeguards and Security, to the employee requesting return of the badge and any other site property in the employee's possession, and execution and return of:

- Security Termination Statement
- W-2 Letter
- Employment Termination Statement. CPC-16
- Benefit Eligibility Forms, as appropriate

## **2. Without Notice**

Occasionally, an employee is terminated due to an absence during which the employee has not been heard from and the department can secure no information. In this situation, the employee's division HR Lead/Rep initiates a Change of Status report, forwards it with an explanatory note as required, and the matter is handled in a manner similar to subsection 3-G.1.

## **Records**

Records generated as a result of implementing this procedure are processed in accordance with Procedure Manual IB, MRP 3.31, "Records Management"

Termination records contain a complete explanation of death that resulted from occupational illness or injury (See Practice 2.24, "Disability Compensation").

## **References**

- DOE 1324.5B, Records Management Program
- Procedure Manual IB, MRP 3.31, "Records Management"
- Procedure Manual 5B, 2.8, "Employee Records"
- WSRC-EM-96-00023, WSRC Retention Schedule Matrix

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Procedure Manual 5B Human Resources Policies, Practices  
and Procedures **Procedure 2.12 Company Plan Absences**

Rev. 7 05/30/00

- Purpose
- Scope
- Terms and Definitions
- Responsibilities
  - Employees
  - Human Resources CHR)
  - Level 2 Managers
  - Management
- Practice
  - 1. Holidays
    - A. Holidays Observed
    - B. Holiday on Saturday or Sunday
    - C. Holiday Work
    - D. Holiday Allowance (Nonexempt and Selected Overtime Positions)
    - E. Holiday Pay Practices for Employees on Disability
    - F. Holiday Pay When on Excused Absence (30 or Less Consecutive Calendar Days)
    - G. Holiday Pay When on Leave of Absence (In excess of 30 days)
    - H. Personal Holiday Policy
  - 2. Jury Duty
    - A. Notification of Call
    - B. Notification of Jury Duty Status
    - C. Confirmation of Having Served
    - D. Jury Duty in Excess of 30 Consecutive Calendar Days
    - E. Jury Duty Work Schedules

F. Availability for Overtime (Nonexempt)

G. Intermittent or Part-Time 'Tun.' Service

H. Pay While on Jury Duty (Nonexempt and  
Selected Overtime Positions)

I. Time Off for Legal Business

3. Appearance in Court as a Witness at Company  
Request

4. Time Off to - Vote-(Nonexempt and Selected  
Overtime Positions)

5. Adverse Weather and No Work Available  
(Nonexempt and Selected Overtime Positions)

6. Death in Family

A. Death in Immediate Family

B. Holiday During Absence

C. Record. Weekly Time Report (Nonexempt  
Employees)

7. Other Absences (Nonexempt and Selected Overtime  
Positions) .

A. Absence Guidelines

8. Absenteeism (Nonexempt and Selected Overtime  
Positions)

9. Pay in Lieu of Notice

Records

References

Forms

Requirements Control System

Attachments

## **APPENDIX MC**



## **Purpose**

This document provides guidance about Westinghouse Savannah River Company (WSRC) pay practices for time not worked due to a company plan absence, in order to maintain consistent and equitable pay administration at the Savannah River Site (SRS).

## **Scope**

These practices apply to all full-service WSRC employees. Policies that apply specifically to exempt, selected overtime position, or nonexempt employees are noted as such.

The following absences are excluded, and addressed separately, from the scope of this practice:

- pay and benefits while in military service are addressed in Practice 2.18, "Employee Plans and Benefits"
- part-time, student and limited-service employees, refer to practice 2.4
- timebank pay, refer to Practice 2.19
- disabilities and medical leaves, refer to Practice 2.24
- non-medical leaves of absence, refer to Practice 2.25

## **Terms and Definitions**

See 5B. Procedure 4.3, "Glossary of Terms", for definition of the following term:

- family, immediate

## **Responsibilities**

### **Employees**

Employees are responsible for

- reporting to work regularly and on time in accordance with their assigned schedule
- informing supervision, as far in advance as possible, if unable to report for work, including the reason for, and expected duration of, the absence
- completing TACS, correctly

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## **Human Resources (HR)**

HR is responsible for

- resolution of questions about, and conflicts with, these practices
- assisting management in obtaining necessary information on an employee who is absent for unexplained or questionable reasons

## **Level 2 Managers**

Level 2 managers are responsible, jointly with HR, for approval or denial of special and unusual requests for paid or unpaid time *off*.

## **Management**

Management is responsible for

- controlling absenteeism impressing on each employee the importance of regular attendance making it clear to each employee that when unable to report for work, it is the employee's responsibility to notify management as far in advance as possible determining the reason for absence, anticipated duration, and eligibility for pay
- taking appropriate action when an employee's attendance is unsatisfactory
- providing each employee with billfold card. "Reporting Absences." OSR 5-17, to ensure knowledge of how to report an absence
- telling each employee to use the 800 phone number (1-800-278-5009) to report a personal emergency affecting work attendance when the call is long distance (Collect calls are not accepted.)
- requesting assistance from HR to determine the cause for unexplained absence(s)

## **APPENDIX MC**

- maintaining necessary records, i.e.. ensure TACS records are accurate
- providing personnel records to receiving organizations when employee transfers, i.e.. Foreman's Time Record, training records, etc.

### **Practice**

Employees report an inability' to be at work to line management. Absences may be reported by telephone to management by calling the number listed on OSR 5-17, "Reporting Absences."

Pay practices for time not worked are addressed in subsections:

Holidays

2. Jury Duty
3. Court Appearances as a witness at Company request
4. Time Off to Vote (Nonexempt and Selected Overtime Positions)
5. Adverse Weather and No Work Available (Nonexempt and Selected Overtime Positions)
6. Death in Immediate Family
7. Other Absences (Nonexempt and Selected Overtime Positions)
8. Absenteeism (Nonexempt and Selected Overtime Positions)
9. Pay in Lieu of Notice

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**NOTE: Effect on Other Hours**—hours paid for but not worked addressed in this practice and credited towards time worked:

In computing hours worked over 40 in the workweek:

- appearance in court as a witness at company request. -

In determining the sixth and seventh day worked in the workweek:

- appearance in court as a witness at company request
- holiday scheduled to work
- death in immediate family
- jury duty
- time off to vote

### **1. Holidays**

WSRC holiday observation includes paying employees who are scheduled off because of the holiday, if certain conditions are fulfilled. When a holiday falls on a day of rest, an 8-hour holiday allowance is paid at the employee's regular rate.

All full-service WSRC employees, regardless of length of service, are included in these holiday pay allowances.

#### **A. Holidays Observed**

Eleven holidays are observed at the Savannah River Site (SRS):

- New Year's Day
- President's Birthday (third Monday in February')
- Good Friday
- Memorial Day (last Monday in May)
- Fourth of July
- Labor Day
- Thanksgiving Day
- Friday Following Thanksgiving Day
- Christmas Eve
- Christmas Day
- Personal Choice

## **B. Holiday on Saturday or Sunday**

When the day of observance of a holiday differs from the date of the holiday, the day of observance becomes the holiday as described below.

### **1. Saturday Holiday**

When a holiday falls on Saturday, the preceding Friday is observed as the holiday for those employees regularly scheduled to work Monday through Friday. Employees that work other than Monday through Friday schedules observe the holiday on Saturday.

### **2. Sunday Holiday**

When a holiday (other than Christmas Eve) falls on a Sunday, the following scheduled workday is observed as the holiday for all employees.

### **3. Christmas Eve on Friday or Sunday**

When Christmas Eve falls on Friday, the preceding scheduled workday is observed as the holiday for those employees regularly scheduled to work Monday through Friday.

When Christmas Eve falls on Sunday, the following scheduled, non-holiday workday is observed as the holiday for all employees.

## **C. Holiday Work**

### **1. Scheduling Holiday Work**

Those employees necessary to maintain continuous operations, 24-hour-per-day and 7-days-a-week, cover necessary functions, and shift workers on a scheduled training week are scheduled to work on a holiday.

If, in the judgment of management, it is practical to curtail operations or dispense with normal services on the holiday, employees assigned to those operations or services are scheduled off.

## **APPENDIX MC**

## **2. Selection of Employees for Holiday Work (nonexempt employees)**

If it is necessary to choose employees to work on a holiday, selection is by seniority from qualified employees who normally would have worked, performing the same tasks during the same hours.

Second consideration is given to qualified employees in related groups within the department performing similar or related work during the same hours.

The intent of this policy is to ensure that the method of selecting employees to work overtime on a holiday is essentially the same as it would have been if the holiday had not been observed. Required work on a holiday should be performed by the employees who would have worked the same hours. When an entire work group is not required to work on a holiday, selection is made based on the overtime roster.

### **D. Holiday Allowance (Nonexempt and Selected Overtime Positions)**

#### **1. Requirements for Holiday Allowance**

To qualify for a holiday allowance, an employee is required to work the regular scheduled hours on the last workday prior to the holiday and first workday following the holiday unless absent for reasons acceptable to management (acceptable reasons include timebank time off, company plans, etc.).

An employee receives no allowance for a holiday on which the employee is scheduled to work if absent without the permission of management. An unexcused absence in a workweek which affects an employee's holiday pay in the:

- following workweek must be noted in the "Comments" section of the TACs record for the following workweek timecard
- previous week requires supervision notifying Payroll immediately



## **2. Scheduled Workday**

An 8-hour holiday allowance, computed on the basis of the employee's regular rate (no premium included), is paid:

- for work performed on a holiday falling on the employee's scheduled workday
- to an employee who requests to observe a holiday that falls on a scheduled workday. Timebank hours may be taken in conjunction with the holiday allowance; however, a full-shift timebank day cannot be taken on a holiday.

## **3. WSRC-designated holiday**

A straight-day, nonexempt or selected overtime position employee on a schedule other than Monday-Friday (8 hours-per-day) is required to:

- make-up
- use timebank hours or
- be excused without pay in order to be accounted for a full work week schedule

Exempt employees on straight day schedules ("8 to 10 hours per day) observe holidays according to their regular schedule. Exempt employees on extended work schedules (similar to shifts 22, 23, 24, and 42) refer to Practice 2.23, Section G. 4. for additional guidance concerning holiday observance.

**NOTE:** When management requires nonexempt employees on shifts or day schedules X3 and X4 to observe a WSRC-designated holiday (excluding personal holiday) on a scheduled workday, employees are considered to have the same regular schedule as if the day were not a holiday and are paid a holiday allowance based on the regular shift schedule. In this scenario, employees in exempt and selected overtime positions observe the holiday based on the regular shift schedule.

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#### **4. Scheduled Day of Rest**

An 8-hour holiday allowance, computed on the basis of the employee's base rate, is paid when a holiday falls on the rotating shift employee's scheduled day of rest.

NOTE: Employees on a 9/80 or 4/10 straight-day schedule observe the preceding scheduled workday if the designated holiday falls on Friday, their day of rest. The following scheduled workday is observed if the designated holiday falls on Monday, their day of rest.

#### **E. Holiday Pay Practices for Employees on Disability**

##### **1. Scheduled Workday**

If a holiday falls on a scheduled workday for which an employee is receiving disability pay, no holiday allowance is paid.

##### **2. Scheduled Day of Rest**

If a holiday falls on a scheduled day of rest during the period for which an employee is receiving disability pay, a base-rate holiday allowance is paid in addition to normal disability pay.

#### **F. Holiday Pay When on Excused Absence (30 or Less Consecutive Calendar Days)**

##### **1. With Pay**

If a holiday falls on a scheduled workday for which an employee is excused with pay, no additional holiday allowance is paid. If a holiday falls on a scheduled day of rest within the workweek and during an absence excused with pay, the base-rate holiday allowance for that day is paid.

##### **2. Without Pay**

When a holiday falls either on a scheduled workday or on a day of rest during an absence excused without pay, the base-rate holiday allowance is paid.

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## **G. Holiday Pay When on Leave of Absence (In excess of 30 days)**

### **1. With Full or Partial Pay**

If a holiday falls on a scheduled workday during an employee's leave of absence with full or partial pay, no additional holiday allowance is paid.

If a holiday falls on a scheduled day of rest during an employee's leave of absence with full or partial pay, a base-rate holiday allowance for that day is paid.

### **2. Without Pay**

If an employee is on a formal leave of absence without pay, the employee is not eligible for holiday compensation.

## **H. Personal Holiday Policy**

### **1. Selection**

Each employee is required to pre-select their personal holiday and schedule the day of choice as directed by his/her division/facility management.

### **2. Scheduling**

The Personal Holiday of choice must be scheduled and observed on a workday according to the employee's regular shift schedule. The individual is scheduled off from work for the 24-hour work day period.

### **3. Pay**

The employee is paid an 8-hour holiday allowance. Nonexempt and selected overtime position employees may use timebank hours, make-up time worked within the workweek, or excused without pay to compensate for a full work week schedule.

Exempt employees receive holiday pay according to their regularly scheduled workday.

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#### **4. Turnover**

When turnover time (0.2 or 0.5 hour) is not part of an employee's work requirements schedule (i.e., employee does not work any hours on the personal holiday) make-up time, timebank time, or excused without pay for the turnover time should not be required in conjunction with the personal holiday. Pay is not granted for the turnover time when not required.

#### **5. Tracking**

Use the time class Personal Holiday for pay, timekeeping, tracking and monitoring. The supervisor/manager tracks this to ensure the employee observes the holiday and that only one is taken during the calendar year. Employees newly hired before July 1 of a year qualify for a Personal Holiday. Employees terminating before observing the holiday are not compensated. Personal Holidays are not carried over into a new calendar year and are forfeited if not used.

#### **2. Jury Duty**

The civic obligation to serve on a jury when called is recognized by the policy which provides pay while absent from work on such duty. Each employee is eligible under this policy, regardless of service.

Employees are paid their regular rate for time spent on jury duty during scheduled hours on scheduled days of work. The employee receives no pay for jury duty on scheduled days of rest.

An employee called on jury duty while on vacation/personal leave is permitted to reschedule this time off beginning with the first day of jury service.

Employees keep jury fees earned.

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### **A. Notification of Call**

When called as a juror, the employee should notify supervision promptly so that necessary rescheduling may be done. The employee should provide supervision with proof of call, if so requested.

### **B. Notification of Jury Duty Status**

An employee excused from work because of jury duty is expected to keep supervision informed of jury duty status on a daily basis when possible. This allows supervision to make necessary arrangements.

### **C. Confirmation of Having Served**

Management requires confirmation of having served as a juror from employee, following the jury duty.

### **D. Jury Duty in Excess of 30 Consecutive Calendar Days**

An employee who is absent for jury duty in excess of 30 consecutive calendar days must be covered by a leave of absence with pay and *service* credit.

### **E. Jury Duty Work Schedules**

1. A shift employee serving daytime jury duty:

- is rescheduled to the shift day hours on the employee's regularly scheduled workdays on which daytime jury duty is performed or expected to be performed. Regularly scheduled days of work and rest are not changed when an employee is on jury duty.
- is not paid a premium for a change of schedule connected with jury duty
- resumes their regular work schedule on the first regularly scheduled day of work following release from jury duty, except as provided below.

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2. In addition to the above guidelines, an 8-hour shift worker serving on daytime jury duty:

- works regularly scheduled hours on regular scheduled workdays on days when jury duty is not performed
- is occasionally scheduled to work the 12-8 shift on the day following release from jury duty. If released so late that it is not reasonable to expect the employee to work the 12-8 shift the following day, the employee may request and be granted a voluntary change of schedule to the 8-4 shift for the day following jury duty.

3. 12-hour shift workers may be required to report for the first day of jury duty the morning the employee completes night shift. When this occurs, the employee is expected to work until 8 hours prior to the reporting time. The employee receives jury duty' allowance for all excused hours.

4. Occasionally a shift employee working the 4-12 or night schedule may be selected for a short-term evening jury session, such as a magistrate's jury, in a community close to the site. The employee is not rescheduled to day-shift hours but is temporarily excused from work for the time necessary. The employee is expected to report to work before and/or after jury duty if at least one continuous hour can be worked during the shift.

5. A day employee called for jury duty remains on the employee's regular schedule.

#### **F. Availability for Overtime (Nonexempt)**

Employees are considered available for overtime unless the overtime hours interfere with the jury duty. Employees are not considered available for overtime during hours required for jury duty or 8 hours prior to jury duty starting each day.

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### **G. Intermittent or Part-Time Jury Service**

When an employee is selected as a juror but is temporarily excused, the employee is to report to work if it can reasonably be expected that at least one hour can be worked.

### **H. Pay While on Jury Duty (Nonexempt and Selected Overtime Positions)**

#### **1. Computation**

Pay is computed by multiplying the employee's regular rate (no premium included) by the number of scheduled hours which the employee would have worked during the period of absence due to jury duty. When a jury is locked up (sequestered) over a scheduled work weekend, Sunday premium may be included. Overtime hours which might have been worked had the employee not been absent are not included.

#### **2. Maximum of Regularly Scheduled Hours**

In any day on which an employee serves as a juror and also works, the hours spent on jury duty and at work should not exceed total regular scheduled hours.

### **I. Time Off for Legal Business**

Time off for legal business is not deducted from the Time Bank provided both the following criteria are met:

- It is not for personal interest.
- The employee is subpoenaed

The TACs timeclass for this entry is "Jury Duty" along with a comment noting the criteria.

#### **3. Appearance in Court as a Witness at Company Request**

An employee appearing in court as a witness at the request of the company is paid as if at work. For Workers' Compensation cases, refer to 5B, Practice 2.24.

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### **1. Normal Work Hours**

An employee appearing during normal work hours is paid as if at work.

### **2. Outside of Scheduled Hours**

An employee appearing outside scheduled hours of work is paid as if at work, including overtime premiums as applicable.

Overtime is not credited to the nonexempt employee's overtime assignment rating. Overtime hours which the employee might have worked are not included.

### **3. Transportation from the Site**

Where logical and convenient, transportation from the site is provided by the company. If transportation is arranged after the employee has reported to the site for work, time in transit from the site to the hearing is counted as time worked.

### **4. Transportation from Home**

It may be more convenient for the company to provide transportation from the employee's home to the court. Transportation time in excess of the normal time required to travel to the work location is considered time worked.

If, under unusual circumstances, the employee is authorized by supervision to provide transportation to and from court, the time in transit from home to court is counted as time worked.

### **5. Meals**

Employee's meals, as required, are paid by the company on a per diem basis.

### **4. Time Off to Vote (Nonexempt and Selected Overtime Positions)**

WSRC allows employees who are registered voters necessary time to vote.

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Polls are usually open during hours which permit voting without loss of work time. If an employee's schedule makes it impractical to vote outside working hours at the employee's usual place of residence, time off with pay is granted for the time needed. The employee's usual place of residence is the location from which the employee usually commutes daily to work.

An employee who desires to vote at a location other than the employee's usual place of residence may be excused without pay.

In all cases, it is the employee's responsibility to request time off to vote and to substantiate the necessity for it. If deemed advisable, an employee may be required to establish the fact of registration and intent to vote.

1. If an employee is excused with pay, necessary time is determined by calculating the period required to reach the polls 30 minutes before the scheduled closing time.
2. When members of a carpool are located in different areas they are excused at the proper time 10 join their carpool. Provided all members of the carpool are registered voters and intend to vote, the allowance is worked out so that each member of the carpool receives normal hours of pay for the shift.
3. If an employee working day hours is held over and requests time off to vote, necessary time off during the regular work hours or at the beginning of the overtime shift are permitted and paid for at their regular rate (no premium included). The nonexempt employee's overtime assignment rating is credited with the actual overtime hours worked.
4. In no case may pay for time off to vote exceed 4 hours pay at the employee's regular rate.

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## **5. Adverse Weather and No Work Available (Nonexempt and Selected Overtime Positions)**

The WSRC President's Office makes the decision to activate the Adverse Weather Policy.

An employee who reports to work and is subsequently sent home because no work *is* available due to facility inoperability (fire: process flood; power failure: etc.) and/or adverse weather **is paid** for the remainder of the shift.

When an employee is given at least four hours' notice not to report to work due to facility inoperability or because of adverse weather conditions, the employee is **not paid**

When an employee does not report to work because of inclement weather conditions, the employee is **-not paid**. Supervision may allow an employee to take time off without pay, make-up time during the work week, or time bank time if deemed appropriate.

## **6. Death in Family**

### **A. Death in Immediate Family**

**NOTE:** The relationship of the deceased to the employee must be noted under the "Comments" section in TACS for nonexempt and selected overtime position employees.

1. Excused absence with pay is granted for up to 3 workdays in the event of a death in the employee's immediate family provided that the employee attends the funeral of the deceased. Immediate family is defined as employee's parents, grandparents, brothers, sisters, spouse, children, grandchildren, sons-in-law, daughters-in-law or parents-in-law. A step relationship such as step-parent, step brother, stepson, normally qualifies as immediate family. In some cases other - close relatives such as one who has substituted for an employee's

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parents or one permanently residing in the home of an employee may be considered as members of the immediate family. The workdays for such absence begin either with the day of death or with a scheduled workday following the day of death.

2. Excused absence with pay up to 3 workdays, under this policy is granted on the basis of the employee's need to be off work. This need is normally related to the death, funeral preparations, and the funeral itself. It is not intended to provide 3 days' paid absence in cases where less time is needed.

3. If excused absence is requested after the day of the funeral, pay is limited to two calendar days' immediately following the funeral. However, total absences cannot exceed three workdays. Specific justification (mourning, consoling other family members, handling estate matters, etc.) is not required for the employee's absence.

#### **B. Holiday During Absence**

When a holiday falls on an employee's scheduled workday it is counted as one of the three applicable workdays for death in the immediate family. The employee is granted pay at the regular rate for that day.

A holiday falling on the employee's scheduled day of rest is not counted as one of the three applicable workdays for death in the immediate family. The employee is granted holiday pay at the base rate.

#### **C. Death Occurring While On Timebank Time Off**

When a death occurs in the immediate family during an employee's scheduled timebank time off, the work schedule of the employee is considered to be the same as if the employee were at work. Scheduled timebank days within that payroll week are not rescheduled.

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**Example:** If a death occurs Wednesday in the immediate family of a straight-day employee using a 1-week timebank period and the funeral is on Sunday, Wednesday, Thursday and Friday of that period are considered timebank days. Monday and Tuesday of the following week are considered the 2 consecutive calendar days immediately following the funeral. The employee may be excused with pay on Monday and Tuesday following the funeral. In this case, Monday and Tuesday are the only days payable under death-in-family policy. Wednesday, Thursday and Friday remain as timebank days taken.

**Exception:** No allowance is granted if the employee does not attend the funeral, because of distance or any other reason.

**D. Record, Weekly Time Report (Nonexempt Employees)**

The date of death, date of funeral, and relation of the deceased to the employee must be noted in the Comment Section of TACS.

**7. Other Absences (Nonexempt and Selected Overtime Positions)**

**A. Absence Guidelines**

WSRC employees are expected to meet the following guidelines when requesting time off. The employee:

- has not been excessively or repeatedly absent such that the individual's performance or department's operating efficiency, was adversely affected
- when expected to handle a situation, has had insufficient time to make other arrangements
- would otherwise be adversely affected and the situation cannot reasonably be handled on non-work time
- has reported the absence(s) to supervision, or an appropriate alternate, in a timely manner

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When excused with pay for part of a shift, the nonexempt and selected overtime position employee is expected to work the remaining regularly scheduled hours. Non-scheduled timebank time or make-up time worked within the scheduled workweek may be used when approved by management. An employee may request permission for time off without pay if such absence does not adversely affect operating efficiency and the absence is reasonable to management.

Employees terminated by WSRC may be paid in lieu of notice.

#### *1. Time Off Due To Public Emergency*

If company-sanctioned, employees may be granted time off with pay to respond to a public emergency which prevents their attendance at work or the continuance of work during their shift schedule. A public emergency may include natural or man-made disasters. Authorization for time off with pay for such emergencies is made by the Vice President and Director of Human Resources with notice to the DOE.

#### *2. Time Off Without Pay*

When an employee requests permission to be absent for personal reasons, the employee may be excused without pay with management approval when all of the following conditions are met:

- such absence does not adversely affect the employee's job performance or the department's - operating efficiency
- employee's cause for absence is reasonable
- absence is 30 or less consecutive calendar days
- qualifying conditions listed in Subsection 7-A

#### *3. Educational Examinations, Meetings, etc.*

An employee may be excused without pay to:

- take educational examinations connected with off-the-job training

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- attend lectures or meetings not connected with the company even though they may be related to the employee's work.

The employee may be eligible for pay if attendance is required by the company.

#### 8. Absenteeism (Nonexempt and Selected Overtime Positions)

Efficient and effective operation depends upon absenteeism being held to a minimum. While management is required to use discretion in managing absenteeism, these guidelines provide a framework for evaluation of individual cases.

The following guidelines should be used when abuse is suspected:

1. Some absences are beyond the employee's control and should not be considered as absenteeism abuse. Examples of these absences are death in immediate family, jury duty, appearance in court, military duty, and some disabilities such as major illnesses and surgery. However, abuse of the situations should be reviewed with the division HR Manager.
2. Excessive use of time off without pay should be kept to a minimum.

NOTE: Use of timebank hours when scheduled is not considered when evaluating absenteeism.

If abuse of unscheduled absences is suspected, management discusses the absences with the employee and, if abuse continues, prepares a written Informative Contact. This focuses proper attention on the issue and establishes a written record. If abuse continues, the constructive disciplinary program is recommended (refer to 5B, 2.7). Management sets attendance standards and, with HR assistance determines when to place an

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**employee on constructive discipline.**

It is important that management ask the appropriate questions when determining reasons for absences and eligibility for pay.

**9. Pay in Lieu of Notice**

If WSRC terminates an individual's employment and the circumstances do not warrant giving two week's advanced notice of termination, the employee may receive one month's pay in lieu of notice if exempt and two week's pay in lieu of notice if nonexempt. Approval is by the HR lead and a Level-2 manager.

Pay in lieu of notice is not given to employees in cases of discharge or voluntary resignations. Records

Records generated as a result of implementing this procedure are processed in accordance with Procedure Manual IB, MRP 3.31, "Records Management".References

DOE 1324.5B, Records Management Program

Procedure Manual IB, MRP 3.31, "Records Management"

**Procedure Manual 5B. Human Resources Policies, Practices and Procedures Forms**

OSR 5-17 Reporting Absences (billfold card)

**Requirements Control System**

None

**Attachments**

None

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**Procedure Manual 5B Human Resources Policies, Practices  
and Procedures**

**Procedure 2.24 Disability Compensation**

Rev. 5 12/13/99

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DATE: 12/13/99

**5B, Human Resources Policies, Practices and Procedures  
Procedure Revision Summary**

- 1. Procedure and Revision #: 2.24 Rev. 5**
- 2. Procedure Title: Disability Compensation**
- 3. Effective Date: 12/13/99**
- 4. Procedure Changes**

Practice: Sub-section C, "Critical Health Conditions", Items lc, d, e-revisions to critical health conditions,

c) Medical treatment for life threatening conditions (Conditions wherein medical intervention is required to prevent imminent loss of life, limb, or vital organ.)

d) Recurring medical condition wherein prompt/immediate medical intervention is required to prevent imminent loss of life, limb, or vital organ,

e) Pregnancy - delivery and up to six weeks postpartum - complications of pregnancy that threaten the health of mother or child

**5. Training Requirements:**

As with any procedure revision, those employees affected by the procedure need to familiarize themselves with the changes. No additional training is required.

**Purpose**

This document provides guidance about Westinghouse Savannah River Company (WSRC) management and compensation practices for time not worked due to medical disability.

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## **Scope**

These practices apply to all full-service WSRC employees. Policies that apply specifically to professional or nonexempt employees are noted as such.

The following absences are excluded from the scope of this practice:

- part-time, student and limited-service employees, refer to Practice 2.4
- all other pay for unworked time, refer to Practice 2.12
- non-medical leaves of absence, refer to Practice 2.25
- timebank time off, refer to Practice 2.19

## **Terms and Definitions**

Definitions are in 4.3, "Glossary of Terms." Responsibilities

### **Employees**

Employees are responsible for

- reporting any injury or illness promptly to management
- following management directions in reporting to the nearest available WSRC Medical Station if injured or ill while at work
- following WSRC Medical directions with reference to treatment, examinations, modified work, etc.
- complying with any and all pregnancy-related work restrictions imposed by Medical, management and/or the Radiological Control Operations (RCO) department manager, if the employee declares a pregnancy
- clearing through WSRC Medical after all work-related disabilities before returning to the job site
- clearing through WSRC Medical before returning to work after non-occupational disabilities lasting longer than 24 working hours
- refunding the difference to the company if total benefits while out of work on workers' compensation are in excess of their normal earnings

## **Management**

Management is responsible for discussing absences due to disability with WSRC Medical

- promptly sending injured or ill employees to WSRC Medical
- completing, and forwarding to WSRC Medical, OSR 5-21, Report of Disability
- ensuring employees complete TACS records correctly accounting for all hours that correspond with their approved shift schedule, using the appropriate time class title as follows:
  - Nonoccupational Illness or Injury - "Vacation-Personal Time" or "Disability-Short-term"
  - Occupational Illness or Injury - "Disability-Worker's Comp"
- notifying OS&HT in case of injury or other serious incident
- investigating on-the-job injury/illness cases
- assisting in accident/injury investigations, as required
- maintaining regular contact with an injured employee pending return to work, and ascertaining recovery progress in all lost-time injuries
- requiring the returning employee to clear through WSRC Medical before returning to work after\_ all work related disabilities and after non-occupational disabilities lasting longer than 24 working hours
- assisting both WSRC Medical and the employee in the development of restricted work and other adjustments

**NOTE:** If an auxiliary timecard is used, the symbol "WC" should be used to denote a work-related injury or illness. An explanation can be added to the "Remarks" Section if necessary.

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WSRC Medical is responsible for

- determining if employees' disabilities meet the Critical Health Condition criteria
- administering medical treatment, as required, and making all arrangements for additional care, as needed, for occupational disabilities
- assisting line management and OS&HT in determining if a disability is work-related
- completing the SRS Injury/Illness Report (OSR 2-24) for any injury/illness, or non-occupational injuries that result in lost time of one day or more, claimed by the employee to be work-related or which is suspected by the physician to be work-related, as well as for off-the-job injuries/illnesses which require work restrictions or serious off-the job injuries/illnesses, and forwarding it to Occupational Safety and Health Technology (OS&HT) Department
- determining if loss of time from work is necessary due to occupational disability
- immediately notifying OS&HT when an employee starts losing time from work due to, and when the employee returns to work after, an occupational illness/injury
- determining the extent of loss of function of member
- maintaining necessary contact with disabled employees for examinations, etc. assisting the employee's doctor in selecting a return-to-work date
- helping line management set up modified work, if required
- clearing the returning employee for work
- conducting follow-up physical examinations and treatment, as required

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Management and WSRC Medical have additional responsibilities when a nonexempt employee is not being carried on the workers' compensation injury roll and as a result of a site injury or contamination is:

- held in WSRC Medical after the end of the employee's shift
- required to report to WSRC Medical outside regular scheduled work hours

### **Occupational Safety and Health Technology (OS&HT) Department**

OS&HT Department is responsible for

- reporting the results of on-the-job injury/illness investigations
- classifying and tabulating injuries/illnesses; an injury must be either occupational or nonoccupational, but never both
- referring questionable cases to OS&HT management for a final classification decision
- notifying the insurance carrier, Payroll Section and Pensions and Records Section when an employee starts losing time from and returns to work, if the disability results in lost time, including the amount of workers' compensation benefits the employee is eligible to receive

### **Payroll Section**

Payroll Section is responsible for

- stopping an employee's regular payroll check when notified by OS&HT that the person has lost more than the 7-day waiting period under South Carolina Workers' Compensation

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monitoring employee pay to ensure that Supplemental Workers' Compensation Benefits are issued appropriately

- deducting government-mandated court orders (i.e., child support, liens, levies, etc.) from supplemental workers' compensation benefits
- reinstating an employee's regular payroll check when notified by OS&HT that the individual has returned to work
- ensuring that the proper refund has been received from the employee by the company when notified by OS&HT that the employee was issued total benefits in excess of employee's normal earnings
- notifies the employee that the regular payroll check will be reduced by the amount of the workers' compensation payment

### **Safety and Health Operations Department**

This department is responsible for determining a declared pregnant worker's dose after conception and reporting the ongoing dose as it accrues if monitoring is performed.

#### **Practice**

The practices are addressed in 5 subsections:

1. Occupational Disability
2. Effect of Occupational Disability On Other Company Plans and Policies
3. Non-Occupational Illness or Injury
4. Pregnancy-related Disability Program
5. Medical Leaves of Absence

#### **1. Occupational Disability**

A. Reporting, Classification, and Management

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Employees missing time due to any occupationally-related injury or illness continue to be required to be evaluated by WSRC Medical before leaving the job site or returning to work. Initial reporting of occupationally-related injury or illness must occur at the time of injury/illness.

1. The employee (or designee, if incapacitated)

- reports any injury or illness promptly to management
- follows management directions in reporting to the nearest available WSRC Medical Station if injured or ill while at work
- participates actively in his/her medical and safety evaluation including the investigation
- follows WSRC Medical directions with reference to treatment, examinations, modified work, etc.

2. Management

- promptly sends injured or ill employees to WSRC Medical
- notifies OS&HT about any on-the-job illness/injury or other serious incident
- completes OSR 5-21, Report of Disability, when an employee's absence due to occupational disability exceeds 24 working hours and distributes as indicated on the form
- investigates on-the-job injury/illness cases
- assists in accident/injury investigations, as required
- maintains necessary records, i.e., timecards, accounting of all hours that correspond with employee's approved shift schedule and designated code using the symbol "WC" to denote a work-related injury or illness. An explanation can be added to the "Remarks" section if necessary

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maintains regular contact with an injured employee pending return to work, and ascertains recovery progress in all time-losing injuries

- ensures the returning employee clears through WSRC Medical before returning to work after all work-related disabilities
- assists both WSRC Medical and the employee in developing restricted work programs and other adjustments

### 3. WSRC Medical

- assists line management and OS&HT, if a disability is work-related
- administers medical treatment, as required, and makes all arrangements for additional care for occupational injury/illness cases
- determines if loss of time from work is necessary due to occupational disability
- completes the SRS Injury/Illness Report (OSR 2-24) for any injury/illness claimed by the employee to be work-related or which is suspected by the physician to be work-related and forwards it to OS&HT
- immediately, verbally, notifies OS&HT when an employee starts losing time from work due to, and when the employee returns to work after, an occupational illness/injury
- determines the extent of loss of function of member
- maintains necessary contact with disabled employees for examinations, etc.
- assists the employee's doctor in selecting a return-to-work date

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- helps line management set up modified work, if required
- clears the returning employee for work
- conducts follow-up physical examinations and treatment, as required

#### 4. OS&HT

- conducts on-the-job injury/illness investigations
- classifies and tabulates injuries/illnesses; an injury must be either occupational or nonoccupational, but never both
- refers questionable cases to OS&HT management for a final decision
- notifies the insurance carrier, Payroll Section and Pensions and Records Section when an employee starts losing time from and returns to work, if the disability results in lost time, including the amount of workers' compensation benefits the employee is eligible to receive

#### 5. Payroll Section

- stops an employee's regular payroll check when notified by OS&HT that the person has lost more than the 7-day waiting period under South Carolina Workers' Compensation
- monitors employee pay to ensure that Supplemental Workers' Compensation Benefits are issued appropriately
- deducts government-mandated court orders (i.e., child support, liens, levies, etc.) from supplemental workers' compensation benefits
- reinstates an employee's regular payroll check when notified by OS&HT that the individual has returned to work

### APPENDIX MD

- ensures that the proper refund has been received from the employee by the company when notified by OS&HT that the employee was issued total benefits in excess of employee's normal earnings
- notifies the employee that the regular payroll check will be reduced by the amount of the workers' compensation payment

### **B. South Carolina Workers' Compensation Law**

This law requires an employer to provide an employee with medical care and income when disabled on the job. It also provides the employee's dependents with income in case of death resulting from such disability.

#### **1. Provisions of the law:**

- the employer must supply medical, surgical, hospital and other treatment, including medical and surgical supplies as reasonably required
- A schedule of payments, adjusted periodically by legal action, is maintained. This schedule provided compensation amounts to be paid for total disability, partial disability, loss of function, disfiguration, or death.

#### **2. Right of Appeal**

An award of the South Carolina Worker's Compensation Commission is conclusive and binding to all questions of fact. However, if either the employer or the employee appeals the decision to a court of common pleas within 30 days from the date of the award, the appeal acts as a "stay of compensation" for 30 days. If the appeal is not settled within that period, the employer or insurance carrier makes payment on the award until the questions at issue have been fully settled.

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### 3. Computation of Pay for Witnesses

An employee requested by the company or its insurance carrier to appear as a witness before the South Carolina Workers' Compensation Commission is paid as follows:

- an employee appearing during normal work hours is paid as if at work
- an employee appearing outside scheduled hours of work is paid as if at work, including overtime premiums as applicable. Such overtime is not credited to the nonexempt employee's overtime assignment rating. Overtime hours which might have been worked are not included.
- time spent appearing is considered as time-worked in computing hours over 40 in the workweek, and in determining the sixth and seventh day worked in the workweek

### 4. Transportation to/from Hearings

Where logical and convenient, transportation is provided by the company. If transportation is arranged after the employee has reported at the site for work, time in transit from the site to the hearing is counted as time-worked.

If it is more convenient for the company to provide transportation from the employee's home to the court, such transportation time, over and beyond the normal time required to travel from home and report for work, is considered as time worked.

If the employee is authorized by supervision to provide transportation to and from court, the employee is paid for such travel at the prevailing authorized rate by the insurance carrier.

### 5. Meals

Under unusual circumstances, meals reasonably included within the period of time during which an employee is appearing as a witness are furnished by the insurance carrier.

## **6. Appearance for Plaintiff**

A nonexempt employee appearing before the South Carolina Workers' Compensation Commission at the request of the plaintiff receives no pay from the company or its insurance carrier for any time, travel, meals, or other expenses.

## **C. Methods of Payment**

### **1. Legal Liability Insurance Carrier**

The Wausau Insurance Companies are retained by the company to discharge its legal liability with regard to Workers' Compensation. The insurance carrier

- conducts a supplementary investigation, as necessary
- determines an employee's eligibility for workers' compensation benefits based on known facts and the law
- makes all workers' compensation payments, such as weekly benefits, hospital, medical and surgical expense, lump sum settlements, etc.

If an employee disagrees with the insurance carrier's opinion regarding Workers' Compensation eligibility, an appeal may be made to the South Carolina Workers' Compensation Commission for final decision. (See 1-B.2, above)

Workers' Compensation is not paid for the first seven calendar days of disability unless the employee is still disabled on the 14<sup>th</sup> calendar day following the injury. If this is the case, compensation is paid at this time for the seven-day waiting period. As a result, the workers' compensation benefit for the third week of disability is supplemented by the compensation for the first week of disability.

Where it is clear that the injury will involve temporary total disability for more than 14 calendar days, workers' compensation may be paid before the completion of the seven-calendar-day waiting period.

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## **D. Benefits**

An employee absent from work due to occupational disability receives both the workers' compensation specified by law and such supplemental benefits as are applicable under the WSRC Special Benefits Plan.

1. The WSRC Special Benefits Plan establishes a basis for granting special benefits to employees who incur an occupational injury or illness. This plan also applies to the employee's dependents when employees lose their lives due to occupational injury or illness.

Benefits awarded to employees under this plan constitute pay for time not worked.

### **2. Supplemental Benefits Under the Special Benefits Plan**

- If workers' compensation is less than the employee's pay computed on the basis of the employee's regular rate, the difference is made up by supplemental benefits.
- Supplemental benefits start after 24 scheduled working hours following the work related injury or illness unless such injury or illness is the result of a Critical Health Condition and then benefits will begin immediately. Benefits are paid without the seven-day waiting period required for workers' compensation. Payment of supplemental benefits continues until the employee returns to work or for six months, whichever is shorter.
- If workers' compensation for any week is more than the employee's pay computed on the basis of the employee's regular rate, the difference is deducted from supplemental benefits for the following week.
- An employee receiving supplemental benefits receives any pay increase (general or progression) in base rate for which the employee becomes eligible and is qualified.

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### **E. Terminated for Lack of Work**

Employees disabled because of occupational illness or injury are not exempt from a reduction in force.

## **2. Effect of Occupational Disability On Other Company Plans and Policies**

### **A. Plans Not Applicable**

The Short Term Disability Plan applies only to nonoccupational disability and therefore is not involved with occupational disability.

### **B. Plans that Fully Apply**

The following plans and policies continue in full force during occupational disability with coordination of any workers' compensation benefits:

- Pension
- Dental Assistance Plan
- Noncontributory Life Insurance Plan
- Savings and Investment Plan
- Contributory Insurance Plans
- Flexible Spending Plan
- Medical Assistance Plan
- Employee Stock Purchase Plan
- US Savings Bond Purchase Plan
- Vision Plan

The disabled employee is eligible for medical, dental, and vision insurance benefits for conditions not related to occupational disability. Family coverage continues, if applicable.

Deductions and premium payments applicable for the above plans and policies are continued. Deductions are made from Supplemental Workers' Compensation benefits received under the Special Benefits Plan while the employee is out on workers' compensation.

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### 1. Pension

Time carried on the workers' compensation injury roll is credited as eligible service in computing eligibility for, and amount of, pension.

An employee may be eligible for Incapability Retirement, provided the employee has 15 or more years of eligible service.

### **C. Plans That May Apply**

The following plans and policies may be involved when dealing with an occupational disability.

#### 1. Timebank Plan

When an employee is occupationally disabled after timebank time has been scheduled, the timebank may be rescheduled, as necessary, in accordance with the provisions of the Timebank Plan.

#### 2. Holidays

If a holiday occurs while an employee is receiving compensation under the Special Benefits Plan and/or workers' compensation, the employee:

- is paid a base-rate holiday allowance for a holiday that occurs on the employee's scheduled day of rest
- is not paid a holiday allowance for a holiday that occurs on the employee's regular scheduled workday

#### 3. Non-Occupational Illness or Injury

##### A. Reporting

The employee or designee, if employee is too incapacitated to report personally, reports the illness/injury to supervision.

##### Management

- documents the report, including employee's condition, physician, estimated time away from the job site and what caused injury, if appropriate
- requests approval from Medical to pay disability benefits

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- ensures appropriate entries are made in TACS, i.e. complete TACS record correctly for accounting of all hours that correspond with employee's approved shift schedule,  
using the appropriate time class title "Vacation-Personal Time" or "Disability-Short-Term"
- completes OSR 5-21, Report of Disability, when an employee's absence due to non-occupational disability exceeds 24 working hours and distributes as indicated on the form
- notifies OS&HT of off-the-job injuries where employee cannot report to the job site or WSRC Medical
- discusses absences due to disability with WSRC Medical, as necessary

3. OS&HT investigates, classifies, tabulates, and reports off-the-job injuries in cooperation with WSRC Medical.

4. WSRC Medical works with employee, supervision and OS&HT, as appropriate, to provide for optimal employee care and meet the business need to have the employee at work.

### **B. Returning to Work**

An employee who returns after a disability of any length and is assigned to a limited work schedule, temporary assignment, or restricted work is required to consult with Medical prior to beginning work. This includes employees who may be medically impaired, on special medication, etc. Management should ask employees to provide a Return to Work Slip when required to clear through Medical. Refer to Practice 2.18, "Employee Plans and Benefits," medical limitations section.

Employees are required to clear through Medical if hospitalized, if they have had an invasive procedure (i.e. surgery, myelogram, catheterization, endoscopy, etc.), or if they have been absent due to an injury or illness for more than

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24 working hours. Management is encouraged to take an active role in monitoring such employees and assisting Medical as appropriate.

Employees returning to work from a non-occupational injury with lost time of 24 working hours or more are required to clear through Medical.

Except as detailed above, employees returning to work from non-occupational illnesses of less than 24 working hours are not required to report through Medical and may return directly to the work site.

Employees disabled for longer than 24 working hours must be released by Medical before returning to a regular work schedule.

### **C. Critical Health Conditions**

An employee who has and is being treated for a Critical Health Condition will not be required to use hours from his or her timebank prior to receiving Short-Term Disability.

1. Critical Health Conditions are defined as:

a) Hospital admission (overnight stay)\*

\*Surgery and medical treatments not covered by the WSRC Medical Plan (cosmetic surgery, for example) do not constitute Critical Health Conditions.

b) Outpatient surgery requiring general, spinal or regional anesthesia \* \*\*

\*\* General anesthesia results in a loss of consciousness; spinal anesthesia is injection of an anesthetic into the spinal cord; regional anesthesia is a block to a region of the body, such as an arm or leg. A local, or topical, anesthetic is not included.

c) Medical treatment for life threatening conditions (A condition wherein medical intervention is required to prevent imminent loss of life, limb, or vital organ.)

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d) Recurring medical condition wherein prompt/immediate medical intervention is required to prevent imminent loss of life, limb, or vital organ.

e) Pregnancy

Delivery and up to six weeks postpartum.

Complications of pregnancy that threaten the health of mother or unborn child.

2. Critical Health Conditions may require recurring treatment under the supervision of a health care provider (for example, chemotherapy, dialysis or post-surgical physical therapy). With prior authorization from WSRC Medical, such recurring treatment may also be covered by Short-Term Disability and not subject to timebank hours.

**D. Pay**

An employee on short-term disability is paid their normal monthly base pay for up to six months. WSRC Medical approves disability pay and may deny pay if the employee is absent for more than 24 working hours and has not been under a licensed physician's care.

When absence due to nonoccupational illness or injury occurs during a nonexempt employee's pay progression period, the effective starting date of that period is maintained and the pay rate increase is given as scheduled if the employee performs regular work for 50% or more of that period. If a nonexempt employee works less than 50% of the pay progression period, the pay rate increase is delayed until the employee has performed regular work for time totaling 50% of that progression period. Nonexempt employees must perform regular work at least 50% of their progression period in order to be granted a progression raise as scheduled.

Pregnancy-related disability is addressed in subsection 5.

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#### **4. Timebank Review Process**

Critical Health Conditions, as defined in the Timebank Policy, do not require use of 24 hours from Timebank prior to payment of Short-Term Disability. Immediate payment of Short-Term Disability may begin when a Critical Health Condition occurs and payment is authorized by the Site Medical Department.

##### **Initiation of Review Process**

If an employee believes his/her specific condition qualifies as a Critical Health Condition but Site Medical Department does not concur, the following review process is available.

1) Employee completes a Timebank Critical Health Condition Review Form (OSR 5-350) detailing their specific condition and describing why they believe use of Timebank hours should not be required. Form must be submitted to Site Medical within ten (10) working days following return to work from the disability.

2) The Site Medical Department reviews employee's statement and provides written response within ten (10) working days. As a result of the review:

- Medical may Approve immediate use of Short-Term Disability,
- Medical may disapprove. Employee must utilize 24 hours from timebank prior to receiving Short-Term Disability, OR
- Medical may disapprove. All absences due to this condition must be taken from timebank.

Medical notes determination on OSR 5-350, returns form to employee, and coordinates payroll changes, if required.

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3. If Medical Department disapproves, employee may request that Human Resources review their specific circumstances with the Deputy Division Manager. When the Deputy Manager agrees that the use of timebank hours is consistent with policy, the Timebank Critical Health Review Board will review to ensure consistency. If the Deputy Division Manager believes there are exceptional considerations that may warrant further Consideration, the review Form will be forwarded to the Timebank Critical Health Condition Review Board.

4. The Timebank Critical Health Condition Review Board meets at a scheduled time each month. The Board ensures consistency in authorizations and may recommend policy changes when appropriate. The Board consists of an HR Manager, Division Deputy General Manager, and Medical Representative who are appointed for a one year term. The employee and his/her supervisor or HR representative is invited and may present information regarding the request to the board.

5. After evaluating an individual request, the Timebank Review Board may:

- Determine use of Timebank hours is not required based on extenuating circumstance and intent of policy.
- Determine use of Timebank hours is appropriate and within policy.

6. Denial of benefits under any of the WSRC/BSRI Employee Benefits Plans (including short-term disability) can be appealed to the plan administrator, 730-1B. Detailed information regarding the appeal process is contained in the General Information section of the WSRC/BSRI Benefits Handbook.

#### **5. Absence Related to Pregnancy**

Disability due to pregnancy is treated like any other disability. Any other pregnancy-related absence is treated as an absence for personal reasons.

See also 5B, 2.25, "Leaves of Absence."

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## A. Notification

1. When pregnancy becomes known, the employee:  
notifies her management, in writing

- reports to WSRC Medical for recording of pertinent data and determination of anticipated delivery date
- continues to advise WSRC Medical of any significant changes in condition as her pregnancy progresses
- decides if she will declare her pregnancy for the purpose of protecting her unborn child from the potential for harmful effects which might be associated with exposure to ionizing radiation
- is responsible for complying with any and all work restrictions related to pregnancy imposed by her management, Medical, and RCO, should she declare pregnancy
- is allowed to withdraw her declaration of pregnancy at any time, without explanation or justification, thus terminating any restrictions

2. When an employee provides initial notification of pregnancy, management:

- ensures employee promptly reports to WSRC Medical
- issues Report of Disability at beginning of pregnancy-related absence
- issues Change of Status forms at the beginning and end of personal leave related to pregnancy (see Practice 2.25)
- conducts interview with pregnant employee emphasizing the need for close communication with management, her personal physician, and WSRC Medical through the pregnancy and after delivery

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conducts an interview with workers declaring pregnancy to protect an unborn child from the potential for harmful effects which might be associated with exposure to ionizing radiation, describing the option for provision of a mutually agreeable

assignment, without loss of pay or promotional opportunity, such that further occupational radiation exposure is unlikely

- reviews WSRC 5Q, Chapter 2, Article 215, "Embryo/Fetus Dose Limits," and Article 216, "Special Control Levels," for declared-pregnant workers assigned to locations where exposure to penetrating radiation or radio nuclide intakes are likely to occur
- completes Part A of form OSR 4-394, "Radiation Declaration/Withdrawal Record for Declared Pregnant Workers," and
  - arranges for a meeting with the facility RCO representative
  - discusses any special control levels and monitoring which may be implemented for the remainder of the pregnancy if the worker chooses to continue to do radiological work
  - forwards the completed OSR 4-394 to HPT Records Group, 735-A
  - keeps a copy of the completed OSR 4-394 in the employee's personnel file

### **3. Facility Radiological Control Operations (RCO)**

Upon notification of a declared pregnancy (Section 1 A), RCO in the employee's local work location:

- reviews WSRC 5Q, Article 215, "Embryo/Fetus Dose Limits," and Article 216, "Special Control Levels"

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reviews procedure 5Q1.2-217, "Use of External Dosimetry," Section 5.4.3, "Monitoring Unborn Children (Pregnant Females)"

- prepares, in coordination with the employee's management, OSR 4-394, "Radiation Exposure Declaration/Withdrawal for Declared Pregnant Workers" to document special control levels to be implemented during the remainder of the pregnancy. Management forwards the completed OSR 4-394, to Employee Exposure Records, 735-A, after the interview is held with the employee.
- determines a declared-pregnant worker's dose after conception and reports the ongoing dose as it accrues if monitoring is performed. Monitoring is not required or performed if the worker is assigned a job that does not require her to perform radiological work.

#### **B. Beginning of Disability**

WSRC Medical determines beginning-of-disability date after consultation with the employee and, if necessary, with the personal physician. Determination is on a strictly individual basis and may not be the same for each employee. A Report of Disability, OSR 5-21, is prepared showing the disability absence beginning with the first hour employee is to receive disability pay.

The beginning date of disability is not normally changed, neither advanced nor postponed, unless there is an unusual delay in delivery.

If the estimated delivery date changes while the employee is on Leave of Absence (LOA) for personal reasons, this normally changes (advances or postpones) the beginning-of-disability date, as determined by WSRC Medical.

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### **C. End of Disability and Return to Work**

The employee's end-of-disability date is no later than 6 weeks from the date of delivery unless specific complications necessitate a longer absence. WSRC Medical should be notified immediately so physicians can determine the employee's end-of-disability date, after consultation with the employee and, if necessary, with her personal physician. The employee must schedule her doctor's appointment before the return-to-work date.

Management should contact WSRC Medical no later than 4 weeks after delivery to ensure that the Report of Disability has been received and to verify the return-to-work date.

The employee must report to work through her Area Medical Station. Reporting time, for nonexempt, is paid as time worked unless she is sent home, in which case the time continues to be reported as "P" until she is released by Medical.

### **D. Going Directly From Pregnancy Disability to Family/Medical Leave/Reduced Work Schedule**

After WSRC Medical determines the end-of-disability date and employee is cleared through Medical, an employee may request to work a reduced schedule or take up to a total of 12 consecutive weeks off without pay and service under the Family and Medical Leave Act (FMLA). The following guidelines apply:

- The work schedule must be mutually agreeable to employee and the Level 2 manager and approved prior to the first week. Prior to the start of the schedule, the manager notifies HR Compensation in writing of the employee's, work schedule and number of hours to be worked. Attach this schedule to the Change of Status, OSR 5-8.

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A reduced work schedule may be approved beginning with the return-to-work date after disability. The reduced work schedule becomes the employee's regular work hours. The time off can be taken as 12 consecutive workweeks or by working a reduced schedule to the equivalent in hours of 12 workweeks (unpaid) over a 12 month period. Refer to Practice 2.25, "Leaves of Absence."

- Excused time with pay for site plans (timebank time off, disability, etc.) is paid according to the employee's work schedule. These paid excused absences are considered as time-worked for accruing the minimum hours per week.
- For nonexempt, selected overtime position, or exempt employees on a full or intermittent family LOA, the managers or supervisors must enter the hours of the employee's absence each week in TACS using the time class title "Family Medical Leave-No Pay." In the event that the absence for an employee is not recorded in TACS for a given week:
  - Nonexempt or Selected Overtime Position Employee
    - An auxiliary timecard should be completed using the code "FM" to indicate time not worked due to Family LOA and submitted to the Payroll Section Exempt Employee
  - An e-mail should be sent to the Payroll Section requesting that the employee's absence due to Family LOA be recorded against the employee's FML entitlement in TACS. The e-mail should include the employee's name, social security number, and the dates and hours that need to be recorded to the FML time class for the employee.



- Service credit is not adjusted when the employee is working a reduced schedule. Service credit is adjusted for time off in excess of 30 days.

#### **E. Termination (Normally Resignation) After Disability**

When an employee terminates after disability for pregnancy, Human Resources and WSRC Medical should be notified promptly. Termination is the same as for any other voluntary separation and the same requirements and processes apply.

#### **F. Relationship to Other Plans**

For employees on paid disability for pregnancy, all benefits continue to apply. Normal deductions continue to be made for Contributory Group Life Insurance plans, Savings and Investment Plan, Health Choice Benefits, Flexible Spending, etc. However, for employees who qualify for the FMLA prior to or after the disability period, the benefit treatment is different since such leave is without pay, service and seniority credit if it exceeds 30 calendar days.

The employee should give as much notice as possible of her intent to take FMLA leave. Notification to supervision must be at least 1 week prior to beginning the leave if pay and/or benefits are to be ensured without interruption.

When notified, management contacts Benefits Administration at least one week before leave to arrange for remittance of monthly premiums for continued medical, dental, vision and contributory life insurance benefits. Also, for this purpose, leaves for exempt employees are submitted through the Level 2 manager's office as far in advance as possible so the employee can make arrangements for direct payments. Effects on benefit plans are summarized in Practice 2.25, Attachment B.

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## 6. Medical Leave of Absence (LOA)

A Medical LOA is granted only in cases in which:

- it may reasonably be expected that the employee will return to work after the leave
- Medical has verified with the employee's personal physician that the condition qualifies for LOA

Management must ensure that each employee going on LOA understands thoroughly the effect it has on WSRC pay and benefits, as noted in this section.

An official LOA is required when an employee is absent from work for more than 30 consecutive calendar days, unless the absence is because of:

- timebank, in conjunction with unpaid time off in accordance with the Timebank Plan policy
- occupational disability and employee is carried on the workers' compensation injury roll
- nonoccupational disability and employee is carried on the short term disability roll

If an employee does not return to work on the first scheduled workday after being dropped from the Short Term Disability Roll, a LOA covering the period of absence not covered by disability is required if the entire period exceeds 30 consecutive calendar days. Time spent on the disability roll during the period is written on the request form.

A leave is not necessary if the employee's disability was terminated on medical evidence on or before the 30<sup>th</sup> day of absence and the employee did not return to work within the 30-day period solely because the employee was not scheduled to work.

Consecutive calendar days are considered to begin on the first full workday absent for excused absence with pay.

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### **A. General**

Family Leave is addressed in 5B, Practice 2.25, which addresses family leave to care for spouse, child or parent who has a serious health condition.

An eligible employee is entitled to a total of 12 workweeks of unpaid medical leave in a 12-month period for:

- child care after its birth (entitlement for such leave expires one year after the date of birth)
- personal serious health condition that prevents the employee from performing the regular duties of an assignment

The time off can be 12 consecutive workweeks or working a reduced schedule to the equivalent in hours of 12 workweeks (unpaid) over a 12 month period. For example, if an employee's normal workweek is 40 hours, that individual is able to take up to 480 hours of medical leave during a 12 month period.

### **B. Eligibility**

All WSRC full service employees (full-time and part-time) who have been employed for at least one year and have worked at least 1250 hours during the previous 12 month period are eligible for Family and/or Medical LOA.

Employees cannot be denied leaves under the Family and/or Medical Leave Act for which they qualify because of poor attendance or performance.

### **C. Exclusion for Key Employees**

Although no employee may be denied LOA, when approved by WSRC HR management, key employees (highest paid ten percent of all WSRC employees) may be excluded from eligibility for restoration of position. For further guidance on this process, contact HR.

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#### **D. Intermittent or Reduced Schedule**

If an employee qualifies for medical leave, an intermittent leave may be taken in separate periods of time due to a single illness or injury rather than one continuous period of time. Periods of time from one hour to several days may be included.

Reduced leave means leave schedules that reduce the usual number of hours per workweek or hours per workday.

Leave for the employee's serious health condition may be taken intermittently when medically necessary (refer 5B, 2.25, "Leaves of Absence" for intermittent family leave).

Only the time actually taken as FMLA leave may be charged against the employee's entitlement (e.g., one day of a five-day workweek equals 0.2 FMLA week).

#### **E. Notification**

If the necessity for the leave is foreseeable based on an expected birth or planned medical treatment, the employee provides management with at least 30 days notice before the date that the leave is to begin. If 30 days notice is not practicable, such as because of lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable.

When an employee provides notice of the need for medical LOA, management notifies the employee, detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. This notification is the same as for Family Leave and is described in Practice 2.25.

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## **F. Approvals**

Qualified medical leave requests are authorized by a Level 2 manager and the division HR lead in coordination with WSRC Medical. OSR 5-8, Change of Status, must be initiated for employees who request continuous leave or reduced work schedule for medical leave. The Change of Status reflects time taken using the code "FM."

## **G. Effect on Benefits and Timebank**

Medical leave has the same effect on employee pay and benefits as family leave under the FMLA. See Practice 2.25 for details.

## **Records**

Records generated as a result of implementing these practices are managed in accordance with referenced site requirements

In addition, the FMLA requires that records be kept of leaves requested and taken under the Act. Such records must be kept for no less than three years and made available for inspection, copying and transcription by representatives of the Department of Labor. Record items required under the FMLA are detailed in Practice 2.25.

## **References**

- DOE 1324.5B, Records Management Program
- Family and Medical Leave Act
- Procedure Manual IB, MRP 3.31, "Records Management"
- Procedure Manual 5B, Human Resources Policies, Practices and Procedures
- Procedure Manual 5Q, Radiological Control Manual
- Procedure Manual 8Q, Employee Safety Manual

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- OSR Forms
- OSR 2-24 SRS Injury Illness Report
- OSR 4-394 Radiation Declaration/Withdrawal Record for Declared Pregnant Workers
- OSR 5-8 Change of Status - Nonexempt Employees
- OSR 5-21 Report of Disability
- OSR 5-350 Timebank Critical Health Condition Review Form

#### **Requirements Control System**

1. Family and Medical Leave Act

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## **WSRC 5B Human Resources Policies, Practices and Procedures**

### **Practice 3-3, Pay for Time Worked**

Rev. 7 09/01/01

This revision was previously numbered 2.11. The revision consists of editorial changes and changes that required a section to be removed completely; therefore, no rev. bars are used.

- Purpose
- Scope
- Terms and Definitions
- Responsibilities
  - Medical
  - Managers
- Procedure
  - Non-exempt General Data
  - Basic Method of Compensation
    - Rate Structure (Non-exempt)
    - Pav Based on Job Assignment
    - Pav for Time Worked on Other than Regular Assignment (Non-exempt)
    - Shift Differential (Exempts. Non-exempts, and SOP)
    - Pav Based on Position Grade Guidelines for SOPs
  - Time Not Directly on the Job (Non-exempts and Selected Overtime Positions)
- Meetings

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- Sign-up and Orientation of New Employee
- Required Clothes Change
- Wash-up Time
- Shift Turnover Relief for Exempts. Non-exempts, and SOPs
- Pay for Time Spent in WSRC Medical (Non-exempts and SOPs)
- Decontamination Wash-up
- Make-Up Time (Non-Exempt/Selected Overtime Positions [SOPD
- Conditions
- Schedule
- Administration with Other WSRC Programs
- Time Record
- Records
- References
- Forms
- Requirements Control System
- Attachments

**Date: 9-1-01**

## **5B Human Resources Policies, Practices & Procedures**

### **Procedure Revision Summary**

1. **Procedure and Revision #:** 3-3- Rev 7
2. **Procedure Title:** Pay for Time Worked
3. **Effective Date:** 9/1/01

### **4.Procedure Changes**

This revision was previously numbered 2.11.

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### **Procedure**

- Basic Method of Compensation - revised detail pay practice as communicated
- Time Not Directly on the Job - removed all meal time allowance information. A new procedure 3-9, "Meals" was created to cover this information.
- Make-Up Time (Nonexempt/Selected Overtime Positions -
- This section was removed from Practice 2.1 and added to this
- procedure

### **5. Training Requirements:**

- Supervision and employees should become familiar with the new/revised requirements. No additional training is required.

### **Purpose**

This procedure establishes practices and guidelines for paying Westinghouse Savannah River Company (WSRC) personnel for time worked.

### **Scope**

This procedure applies to all full-service WSRC employees. Items that apply specifically to exempt, non-exempt, or selected overtime position (SOP) employees are noted as such.

### **Terms and Definitions**

Terms and definitions used are in item 4.3, "Glossary of Terms."

### **Responsibilities**

### **Medical**

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Medical is responsible for:

- completing Treatment Records (OSR 2-3) for employees reporting for medical care and managing it as part of the individual's medical record
- completing Medical Attention form (OSR 2-1) and appropriately distributing copies, for treated employees

### **Managers**

Managers are responsible for paying employees in accordance with the requirements of this procedure.

### **Procedure**

#### **Non-exempt General Data**

Non-exempt employee pay is based on weekly entries recorded in TACS (Time and Attendance Collection System). Non-exempt employee pay is by check, or direct deposit, and mailed to the employee's address on record no later than Wednesday following the week in which the pay is earned. Work time calculation and compensation is in increments of 0.1 hour (six minutes). Any employee who works for any part of a six-minute period is paid for the entire six-minute period as time worked.

### **Basic Method of Compensation**

#### **Rate Structure (Non-exempt)**

The non-exempt rate structure is a series of pay grades, each having a lateral range. The base rate for each job is established by considering requirements for education and experience, responsibility, effort, and working conditions.

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### **Pay Based on Job Assignment**

A non-exempt employee is paid at a rate within the range of rates prescribed for the job classification. Exempt and SOP employees are paid within a rate range reflecting their performance and job responsibilities.

Pay for Time Worked on Other than Regular Assignment (Non-exempt)

Temporary Assignment in Same Pay Grade - a non-exempt employee is continued at the same rate whenever a temporary job assignment is in the same or lower pay grade.

Temporary Assignment in Higher Pay Grade (detailed/temporary promotion) - temporary promotions require division HR approval.

Selection for Detailing/Temporary Promotion - in selecting a non-exempt employee for detail/temporary promotion to a higher pay grade, the manager must first declare a vacancy (existing or new position). They then contact the personnel coordinator to determine which employee within the work group is the most senior, qualified for the detail position and next in line for promotion to the higher-rated job. Non-exempt personnel cannot be detailed to exempt positions nor can they be detailed from unit to unit.

Restrictions - a non-exempt employee normally is not detailed to a higher pay grade for more than 28 days. If assigned to a higher pay grade for a longer period (normally not in excess of 60 days), the employee is temporarily promoted. Note this on the Change of Status form (OSR 5-8).

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Recording Detailing and Temporary Promotion - detailing rate changes are noted on the timecard by circling the hours to be paid at detail rate and identifying pay grade in the remarks section. Temporary promotions require the submission of an OSR 5-8. The name of personnel coordinator who approved the employee must be written in the remarks section. If verification is necessary, Payroll Section contacts the personnel coordinator identified on the Timecard.

A non-exempt employee is detailed or temporarily promoted to a higher pay grade when:

- an approved vacancy for the higher rated job exists and business conditions warrant a detail or temporary promotion
- the employee is within the seniority unit/work group and position assignment who would normally be next in line for promotion to the higher rated job in which the vacancy exists.  
(General service operators do not qualify for detail/temporary promotion into a seniority unit.)
- the employee performs all of the duties and responsibilities and is skill-qualified for the higher rated job
- the employee is assigned to the higher pay grade for a full shift or longer

Only employees who have accumulated step progression credit at a higher grade level prior to September 1, 2001 will have progression credit.

A non-exempt employee when detailed/temporarily promoted is:

- paid normal rate of pay when assigned to a higher pay grade for training

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- paid at the higher rate for all hours worked when det. A to a higher pay grade for a full shift or longer
- paid the same rate the employee would receive if promoted

Temporary Assignment in Lower Pay Grade - if a non-exempt employee is involuntarily assigned to a lower pay grade, the employee's current pay rate/grade is retained. However, if an employee requests an assignment to a lower pay grade, she or he receives the pay rate closest to, but not greater than, the employee's current rate, but not to exceed the top of the rate range of the new grade.

Pay Feathering - in an effort to minimize negative impacts to non-exempt employees whose positions/grades are impacted by reductions in force (RIF) and other circumstances, WSRC has expanded the Feathered Pay Reduction policy. The policy includes demotions resulting from:

- disqualification of training or certification
- disqualification for medical reasons
- excessing or a RIF

The Feathered Pay Reduction policy does not include voluntary or disciplinary-related demotions. Feathering will not apply to exempt employees. If an exempt employee qualifies to return to a non-exempt unit and cannot maintain the previously held non-exempt grade, the feathering policy applies at that point.

Any non-exempt employee whose pay rate is impacted by the approved conditions described in this subsection is eligible for a gradually reduced pay scale rather than immediate cut back to the appropriate rate in the lower grade. The policy allows for reductions of \$50 or less at 6-month intervals; that is the most rapid reduction rate an impacted non-exempt employee could experience. HR Compensation has established feathered pay

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rates for each grade rate range, using a series of step combinations on the current non-exempt rate structure. These guidelines are used, as necessary, to stagger pay regressions.

Any non-exempt employee involved in a RIF is automatically eligible for gradual pay regression. Non-exempt employees notified of a RIF resulting in pay reduction due to bumping receive at least seven days' notice before the reduction schedule begins. Contact appropriate division HR when pay feathering is applicable.

### **Shift Differential (Exempts, Non-exempts, and SOP)**

Eight (8) Hour Shift Worker: Employees Regular Schedule ~ the shift differential for time worked is determined by the starting time of that schedule as follows:

Starting between

10:00 p.m. and 5:59 a.m. \$0.40 per hour

6:00 a.m. and 1:59 p.m. \$0.00 per hour [2:00 p.m. and 9:59 p.m. \$0.20 per hour

Eight (8) Hour Shift Worker: Outside of Employee's Regular Schedule—the shift differential for time worked on a normal workday outside of the employee's regular schedule is determined as follows:

Midnight to 8:00 a.m. \$0.40 per hour

8:00 a.m. to 4:00 p.m. \$0.00 per hour

4:00 p.m. to midnight \$0.20 per hour

Twelve Hour Shift Worker - 'welve (12) Hour Shift Worker Regular Schedule and Outside Regular Schedule on 12 Hour Shift ~ The shift differential for time worked on the 12 hour shift is determined as follows:

12 Hour Shift Differential

Day shift \$0.00 per hour

Night shift \$0.40 per hour

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Holidays - the shift differential for time worked on a holiday is determined in accordance with information provided under shift differential section for 8- and 12-hour shift workers.

Shift Differential and Premium Pay - shift differential is included in determining the amount of premium pay.

### **Pay Based on Position Grade Guidelines for SOPs**

SOP employees' pay is based on entries recorded in TACs and approved by their manager. The employee is paid by check or direct deposit and mailed to the employee's address of choice no later than the last business day of the month which allows for one banking day before a weekend or holiday.

Work time calculation and compensation is in increments of 0.1 hour (six minutes). An employee who works for any part of a six-minute period is paid for the entire six-minute period as time worked.

Pay for time not directly on the job is specified above. Overtime pay practices for hours worked exceeding 40 hours in a work week are described in 5B, 2.26, "Overtime and Premium Pay for Selected Overtime Positions" (when revised Procedure 3-13).

### **Time Not Directly on the Job (Non-exempts and Selected Overtime Positions)**

For meal time not directly on the job, see Procedure 3-9, "Meals."

### **Meetings**

An employee is paid for time spent attending meetings required by the company.

### **Sign-up and Orientation of New Employee**

Pay at regular rate is paid to a new employee for time spent in sign-up and orientation. A new employee is instructed to report for such activity at the beginning of the workday.

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**Required Clothes Change**

An employee is paid for time to permit clothes change when company requires and provides (at work facility) change of clothing. Time to permit such activity is provided within the employee's regular schedule.

Under unusual circumstances, an employee may be required to change clothes outside of regular schedule. Time to permit such change is added to actual work time for determination of total paid time.

**Wash-up Time**

On some jobs, wash-up and clothes change may be considered appropriate even though not required by the company. Reasonable time for such activity is normally provided before completion of the employee's regular schedule. Such time is not to exceed ten minutes, including walk time from the job-site to the change room. An employee receives no pay for any time spent outside regular hours for non-required wash-up or clothes change.

**Shift Turnover Relief for Exempts, Non-exempts, and SOPs**

Where operation is continuous and there is a mutual agreement, employees may receive shift turnover relief before shift starting time. In no instance is this shift turnover relief to be made earlier than ten minutes before shift starting time.

When employees are required to report 0.2 or 0.5 hours early for turnover relief, employees will work an 8.5, 12.2, or 12.5 hour schedule.

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### **Pay for Time Spent in WSRC Medical (Non-exempts and SOPs)**

Use of WSRC Medical Facilities - WSRC Medical does not serve as an employee's personal physician; however, medical treatment not requiring outside attention is provided. Employees are expected to use WSRC Medical facilities as follows:

- report to the manager any on-the-job injury, no matter how slight, and promptly visit WSRC Medical to receive proper medical attention.
- report to the manager when returning to work after absence due to illness or injury. The manager refers the employee to report for examination. This is for the protection of the employee and fellow workers and determines the employee's fitness for duty.
- report to the manager, who refers the employee to WSRC Medical, when the employee reports to work with an illness or injury which occurred outside of work
- the employee becomes ill or is injured while on the job

**Medical-Related Pay Practices:** occupational injury or illness - an employee sustaining an occupational injury or illness, as defined here, is paid on the regular payroll as time worked:

- for all time spent in WSRC Medical waiting for and undergoing treatment, examination, or observation
- for time spent during regularly scheduled work hours waiting for and undergoing treatment, examination, or observation in offsite medical facilities when sent there by WSRC Medical
- for the remainder of the regularly scheduled shift during which the injury occurs

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An employee, as a result of a lost workday case, who loses sufficient time from work is to be carried on the Personal Injury Roll. The employee is paid in accordance with the provisions of the Special Benefits Plan, rather than under provisions applicable to the regular payroll. In this case, the timecard is marked PI (Personal Injury). Refer to the Employee Benefits Manual for guidance on the Special Benefits Plan for occupation-related disabilities.

Time in Medical Outside Regular Schedule - when an employee, as a result of an occupational injury, illness or contamination, is held in WSRC Medical after the end of the shift or is required to report to WSRC Medical outside regular scheduled work hours and is not being carried on the Personal Injury Roll, the manager and WSRC Medical are responsible for the following:

- WSRC Medical - after examination, treatment or observation, it is the responsibility of WSRC Medical to record on the Treatment Record (OSR 2-3)
  - the time and date the employee reported to WSRC Medical
  - the time and date the employee was dismissed from WSRC Medical
  - other pertinent information
- WSRC Medical - completes a Medical Attention form (OSR 2-1) in duplicate and distributes as follows:
  - original to employee to give to manager
  - duplicate to employee's WSRC medical file

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○ Manager

- determines the time the employee was in WSRC Medical for treatment or observation outside scheduled work hours, from the completed medical attention form. An employee who is required to report to WSRC Medical during hours not consecutive with regular work hours is paid a minimum of four hours pay.
- enters the indicated amount of time in the appropriate column(s) on Employee's Time Record and on the timecard
- makes the notation, "Pay hours for time spent in Medical - Work related Injury," under Remarks on the employee's timecard and time record
- files the medical attention form in the employee's departmental folder

Non-occupational Illness or Injury Occurring during Working Hours - an employee is paid as time worked for time spent during scheduled work hours in WSRC Medical. When WSRC Medical decides an employee should not return to work, the employee is paid for the balance of the shift under provisions governing pay for non-occupational disability.

Non-occupational Illness or Injury Occurring Before Working Hours - an employee who reports to work with an illness or injury, but is sent home on the recommendation of WSRC Medical, is paid for the full day under provisions governing pay for non-occupational disability.

Return from Disability - time spent checking through WSRC Medical on return from disability is paid as time worked if the employee is returned to work for the remainder of the shift. If

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not returned to work, the employee is continued on the disability roll if the absence qualifies for short-term disability pay. If the absence does not qualify for short-term disability, the employee uses hours from their time bank. However, time spent in medical is paid as time worked.

Normally, an employee is not directed by WSRC Medical to report at a time outside of the employee's regular work hours. If so directed, the time spent in WSRC Medical is considered as time worked. When such cases occur, WSRC Medical completes an OSR 2-1 and distributes as shown under section titled Time in Medical Outside Regular Schedule.

Transportation - an employee is provided transportation home, if ride accommodations are missed due to:

being dismissed from work on recommendation of WSRC Medical before a reasonable period preceding the end of the shift, or if Medical determines the employee should not drive being held beyond the employee's shift for decontamination wash-up, medical treatment, or observation.

Payment is not made for time spent outside regularly scheduled hours of work waiting for transportation. The employee's manager authorizes and arranges transportation home for the employee. OSR 2-1 is completed by Medical when transportation is provided for sick or injured employees.

#### **Decontamination Wash-up**

When management/Radiological Control Operations requires an employee to be held over beyond scheduled hours of work for the purpose of decontamination, the time is considered as hours worked. In such situations, Radiological Control Operations determines when the employee may leave the site.

#### **Make-Up Time (Non-Exempt/Selected Overtime Positions [SOP])**

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Make-up time practices allow an employee, at their request, the ability to take time off for personal reasons with pay. This practice does not replace company plans that allow for excused absences with pay. It provides an option for employees to occasionally seek a variance from their established work schedule. This practice is not to be used as flex time. See also:

- Practice 2.12, "Pay for Time Not Worked" (when revised procedure 3-14)
- Practice 2.19, "WSRC Time Bank Plan" (when revised Procedure 3-2)
- Practice 2.24, "Disability Management and Compensation" (when revised Procedure 4-6)
- Practice 2.25, "Leaves of Absence" (when revised Procedure 3-14)

### **Conditions**

NOTE: Management ensures the employee understands that no premium pay is due for make-up time. One shift means eight hours for an 8-hour-a-day employee; nine hours for 9/80s shifts; 10 hours for 4/10 shifts; and 12 hours for 12-hour shift personnel. Turnover time may be included in the make-up time worked and make-up time off.

Time off for personal reasons and make-up time in 6-minute (0.1 hour) increments requires prior approval by management. Make-up time not to exceed one shift of cumulative hours in a weekly pay period may be approved provided the:

- make-up time is requested by the employee
- management assures productive work is performed by the employee during the make-up time. In some cases, this work may be supervised indirectly but accountability for time worked and paid remains the manager's responsibility.
- make-up time is within the same weekly pay period as the absence

- make-up time does not create the need for premium pay for the employee or others. The employee waives premium pay for make-up time worked outside the regular schedule.

If unable to complete scheduled make-up time due to absence because of disability, company plans, emergency, etc., the make-up time agreement is canceled and determination of payment for the approved time off is in accordance with current pay practices.

When the employee has completed the work (make-up time) outside the normal work schedule and later in the same pay period is absent due to disability, company plan, emergency, etc., the make-up time agreement remains in effect.

#### **Schedule**

When make-up time is requested by the employee and approved by management, the make-up time is considered the employee's regular schedule.

#### **Administration with Other WSRC Programs**

NOTE: Make-up time for non-exempt personnel is not compensatory in lieu of pay. Compensatory time is a separate, exempt, employee practice and is governed by 5B, Practice 2.23, "Exempt Employee Overtime Administration" (when revised Procedure 3-12).

Only in extremely rare cases can make-up time be granted in conjunction with time bank hours, excused time with pay, or excused time without pay. Management is expected to select the appropriate option for time off if make-up time is requested and cannot be used.

Provided make-up time conditions are met, requests are considered on a first-come, first-served basis, no sooner than 14 calendar days and normally no later than 24 hours before the requested schedule deviation.

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Employees working other than Monday through Friday, e.g., 12.5-hour shift work, are expected to make-up time on their days off, if approved by management. Make-up time is worked within existing work-limitation policies, i.e., 12-hour work limitation may apply.

If an employee is scheduled to work make-up time and an overtime opportunity arises, that employee is considered unavailable and is not offered or charged with the overtime for hours agreed upon as make-up time. However, overtime offers can be made in conjunction with make-up time. Management must handle overtime and make-up time separately.

### **Time Record**

The employee's time record reflects the actual hours worked each day. When time is made up in conjunction with the employee's regular shift or on a day of rest the make-up time worked is recorded in the make-up column. Make-up time worked and all other regular scheduled hours should equate the weekly schedule. ( See also, Practices 2.11, "Pay for Time Worked" [when revised Procedure 3-3] and 2.12, "Company Plan Absences" [when revised Procedure 3-14].)

### **Records**

Records generated as a result of implementing this procedure are processed in accordance with Procedure Manual IB, MRP 3.31, "Records Management."

### **References**

- Procedure Manual VB, *Management Requirements and Procedures*, MRP 3.31, "Records Management"
- Procedure Manual AB, *Human Resources Manual*
  - Practice 2.8, "Employee Records" (when revised Procedure 1-2)
  - Practice 2.9, "Termination Practices" (when revised Procedure 2-5)

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- Practice 2.12 /'Company Plan Absences" (when revised Procedure 3-14)
- Practice 2.13, "Nonexempt Overtime and Premium Pay" (when revised Procedure 3-11)
- Practice 2.26, "Overtime and Premium Pay for Selected Overtime Positions" (when revised Procedure 3-13)

**Forms**

OSR 2-1, Medical Attention

OSR 2-3, Treatment Record

OSR 5-8. Change of Status

**Requirements Control System**

None

**Attachments**

None

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## **WSRC 5B Human Resources Policies, Practices and Procedures**

### **Procedure 3.6 Grievance Procedure**

Revision No. 5 May 6, 1999

- Purpose
- Scope
- Terms and Definitions
- Responsibilities
  - Human Resources (HR)
  - Immediate Management
  - Level 2 Manager
  - Level 1 Manager or Designee
- 1. Program Description
  - Step One
  - Step Two
  - Step Three
- 2. Time For Holding Grievance Conferences
- 3. Grievance Reports and Records
  - Report Preparation
  - Records
- Records
- References
  - Requirements Control System
- Attachments

#### **Purpose**

This procedure outlines the Westinghouse Savannah River Company (WSRC) grievance procedure which is designed to allow an employee to formally discuss with management any condition related to employment which the employee considers unsatisfactory.

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## **Scope**

This procedure applies to all active full-service WSRC nonexempt employees.

Records management of grievance-related documentation is addressed in 5B, Practice 2.8, "Employee Records."

## **Terms and Definitions**

Definitions are in 4.3, "Glossary of Terms." Responsibilities

### **Human Resources (HR)**

HR is responsible for

- assisting employees in solving problems and grievances
- providing advice and help to an employee, if requested, before formal grievance initiation
- assisting the employee, if requested, in appealing a grievance
- providing guidance and policy interpretations to management when responding to grievances, as appropriate
- tracking and monitoring grievance documentation

### **Immediate Management**

Immediate management is responsible for

- notifying line management and the division HR manager immediately upon receipt of a formal employee grievance
- discussing the condition with the employee and conducting necessary investigations
- answering grievances within five working days after receipt
- making arrangements for Step Two if a grievance is not settled at Step One

### **Level 2 Manager**

The Level 2 manager is responsible for

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- scheduling a conference date with the employee within five working days from the date the employee makes the request
- conducting further investigation, if necessary
- answering a grievance within five working days after the conference
- making arrangements for Step Three if a grievance is not settled at Step Two

### **Level 1 Manager or Designee**

The Level 1 manager or designee is responsible for

- scheduling a conference date with the employee within five working days from the date the employee makes the request
- conducting further investigation, if necessary
- answering grievance at the conference or telling the employee the date on which the answer will be given, pending further investigation

### **Procedure**

The procedure is divided into three subsections:

1. Program Description
2. Time for Holding Grievance Conferences
3. Grievance Reporting and Records

Employees must file their grievances within six months of the affected date of the action being grieved upon unless it involves a violation of State or Federal law and/or regulation. If the action grieved upon involves a State or Federal law and/or regulation, the time specified in the law or regulation for filing a complaint applies.

### **Program Description**

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A. In a normal company business environment, misunderstandings may occur between employees and supervision. Management intends to resolve all grievances in a manner that ensures the fair and equitable treatment of all concerned. All grievances should be presented to the employee's management promptly and settled as quickly as possible.

B. In preparing and presenting the grievance, the employee may ask the assistance of, or be accompanied by, one of the following:

- another employee
- a member of supervision
- a member of HR (including an Employee Counselor)

C. HR helps employees and management solve problems and grievances. If an employee wants advice or help before initiating a formal grievance, or help to appeal the grievance, the employee may:

- discuss the matter with HR
- request assistance from HR

### **Step One**

A. Employees should promptly present any grievance to their immediate management.

B. Immediate management

discusses the condition with the employee

makes such investigation as necessary

gives the employee an answer as soon as possible, but not later than five working days after the original discussion (excluding weekends and holidays)

When a written grievance is submitted, management immediately notifies line management and division HR.

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C. If, after the answer is given, the grievance is not satisfactorily resolved, the employee tells management their desire to take the grievance to Step Two (appealing Step One) for further discussion.

D. Management handling Step One makes necessary arrangements for Step Two as soon as the employee makes the request.

### **Step Two**

When an employee requests discussion at Step Two, the Level 2 manager sets a date for the conference to be held within five working days (excluding weekends and holidays) from the date of the request.

A. At the Step Two conference

the employee is urged to discuss fully all the facts concerning the grievance

the person hearing the grievance performs any necessary further investigation of the circumstances and gives the employee an answer within five working days (excluding weekends and holidays) after the conference

B. If, after this answer is given, the grievance is not satisfactorily resolved, the employee tells line management their desire to take the grievance to Step Three for further discussion.

C. The manager handling Step Two makes the arrangements for Step Three immediately upon the employee request.

### **Step Three**

A. When advised that an employee requests discussion at Step Three, the Level 1 manager or designee sets a date for the conference to be held within five working days (excluding weekends and holidays) from the date that the employee made the request.

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B. At the Step Three conference, the employee is again urged to state fully all the facts concerning the grievance. The Level 1 manager or designee may answer the employee at this time or, if further investigation is necessary, tells the employee the date on which the answer will be given.

The Step Three answer is final, there is no provision for further appeal.

## **2. Time For Holding Grievance Conferences**

All grievance conferences are held during the working hours of the aggrieved employee. Any employee who loses time from regular duties in the presentation of a grievance suffers no loss of earnings; i.e., this is considered time-worked for pay purposes. However, another employee assisting or accompanying the aggrieved outside that employee's regular schedule, is not paid, under this procedure, for the additional time.

## **3. Grievance Reports and Records**

### **Report Preparation**

Upon becoming aware of the grievance, management who handles the grievance at Step One notifies division HR by memorandum through the Level 2 manager. This is done at once, even though the Step One answer has not yet been given.

### **Records**

A. Immediately after each step where the grievance is heard and answered, management handling that step prepares OSR 5-28, "Record of Grievance." The record should be a complete, clear, and concise summary of all pertinent facts.

B. Copies of the Record of Grievance are forwarded promptly:

- original — division HR
- copy ~ HR Policy and Practices
- copy — manager handling next step, if grievance is not settled
- copy — Level 2 manager



C. No copy of a Grievance Record or any other documentation pertaining to any grievance is ever filed in an employee's personnel file. Permanent Grievance Records are maintained by HR in separate files.

**Records**

Records generated as a result of implementing these practices are managed in accordance with referenced site requirements.

**References**

- DOE 1324.5B, Records Management Program
- Procedure Manual J\_B, MRP 3.31, "Records Management"
- Procedure Manual 5B, Human Resources Policies, Practices and Procedures
- WSRC-EM-96-00023, Record Schedule Matrix (RSM)

**Requirements Control System**

None

**Attachments**

None

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## 5B Human Resources Policies, Practices and Procedures

### **Policy 3.15 Personal Assessment and Development Process**

Revision 0 February 27, 1998

- Purpose
- Scope
- Terms and Definitions
- Responsibilities
  - Employees
  - Division HR Manager
  - Managers
- Procedure
  - A. Phase I: Initial Expectations Meeting
  - B. Phase II: Interim
  - C. Phase III: Close-Out Meeting
- Records
- References
  - Requirements Control System
- Attachments
  - Attachment A. PADP Process Flow Chart

#### **Purpose**

This procedure details the administration of the Westinghouse Savannah River Company (WSRC) established process for assessing employees' job performance and developmental needs. The Personal Assessment and Development Process (PADP) is documented via OSR 5-333, "Personal Assessment and Development Process", form.

#### **Scope**

This procedure is applicable to all full-service WSRC employees and its partners. (BSRI craft does not participate in this process)

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## **Terms and Definitions**

Definitions are in 4.3, "Glossary of Terms."

## **Responsibilities**

### **Employees**

Employees are responsible for

- participating in Initial Expectations Meetings at the beginning of the fiscal year with their immediate manager or supervisor
- completing Sections I, II, III and IV of the PADP form in collaboration with their immediate manager or supervisor
- identifying MultiSource Feedback evaluators in collaboration with their immediate manager or supervisor
- requesting interim review(s) of individual performance if necessary and/or desired
- completing Section VII of the PADP form (optional)
- participating in a Close-Out Meeting with their immediate manager or supervisor during which job performance is assessed and development actions are identified and agreed to by both parties.

### **Division HR Manager**

The Division HR Manager is responsible for ensuring that administration of the PADP process within the division meets the standard requirements of this procedure, including appropriate documentation.

### **Managers**

All managers and supervisors are responsible for

- communicating and implementing the PADP with their direct reports
- conducting Initial Expectations Meetings at the beginning of the fiscal year with their employees

- identifying MultiSource Feedback evaluators in collaboration with their employees
- conducting interim review(s) of individual performance if necessary and/or desired by either the employee or the manager or supervisor
- conducting a Close-Out Meeting with each of their direct reports during which performance is assessed and developmental actions are identified and agreed to by both parties
- facilitating a meeting with the employee and the next level of management concerning the employee's performance assessment, if requested by the employee
- providing completed PADP original forms for each of their direct reports to the HR Division Lead for storage in the employees' personnel file.

### **Procedure**

The objectives of this procedure is to provide for an annual assessment of performance which identifies strengths and areas for improvement related to job responsibilities, allowing for candid and open two-way communications between an employee and manager or supervisor.

This procedure is divided into 3 subsections.

A. Phase I: Initial Expectations Meeting

B. Phase II: Interim

C. Phase III: Close-Out Meeting

#### **A. Phase I: Initial Expectations Meeting**

Prior to and/or during the Initial Expectations Meeting, the employee and the manager or supervisor collaborate and develop a draft input for Sections I, II, III, and IV of the PADP form.

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1. Using the completed draft, the employee and the manager or supervisor meet to review the employee's Job Scope Statement, time-based objectives (if applicable), and individual professional development plan. Discussions also focus on the expectations of the manager or supervisor with regard to the employee's performance of job duties and responsibilities.
2. All additions or changes resulting from this collaborative discussion are then incorporated into the PADP form.
3. The employee documents understanding of and commitment to the annual Safety and Ethics pledges.
4. Both the employee and the manager or supervisor sign and date the PADP form at the end of Section IV.
5. If the employee is scheduled to receive MultiSource Feedback during the upcoming performance period, then this process is also reviewed during the Initial Expectations Meeting. Evaluators are identified collaboratively between the employee and the manager or supervisor as described in the PADP Handbook, Section 6.0.

**NOTE:** MultiSource Feedback will be implemented utilizing the following schedule:

- FY 98 - All Managers and Supervisors
- FY 99 - All Professional/Exempt employees
- FY 00 - All Nonexempt employees excluding BSRI craft employee

#### **B.Phase II: Interim**

An interim review is not mandatory, however, it may be conducted at the request of the employee or the manager/supervisor.

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An interim review is recommended when there is

- a significant change in the employee's job scope and/or time-based objectives during the performance period
- a reassignment of the employee to a new job assignment during the performance period
- a change of immediate manager or supervisor during the performance period

Changes made to the original PADP during the course of the performance period should be documented. A copy of the original PADP should be maintained and supplemented with all necessary revisions.

### **C.Phase III: Close-Out Meeting**

To prepare for the annual Close-Out Meeting, both the employee and manager or supervisor should review information documented in Sections I, II, III, IV of the employee's PADP form, consider the results contained in the employee's MultiSource Feedback Report (if applicable in the performance year), and identify issues to be discussed at the meeting.

#### **1. Employee prepares for Close-Out Meeting by**

- documenting status of all time-based objectives
- providing status of time-based objectives and developmental action to the immediate
- manager or supervisor
- reviewing section V, "Core Competencies"
- drafting comments for Section VII (optional)

#### **2. Manager or supervisor prepares for Close-Out Meeting by**

- completing Section V, "Core Competencies"
- completing Section VI, "Reviewer's Comments",
- signing and dating the PADP in the blocks immediately following Section VII.

#### **3. During the Close-Out Meeting, the employee and the manager or supervisor**



- review the employee's job performance and assess the degree to which management
- expectations were met o review and discuss all of the manager or supervisor's comments documented in the PADP form
- review and document all of the employee's comments
- collaborate in planning for the next year's PADP

4. If a desire for further response is indicated by the employee, a second meeting will be scheduled. During the management review meeting, the employee along with the immediate manager or supervisor and the next level manager

- will review and discuss the employee's job performance and the degree to which management expectations have been met
- address specific questions and/or concerns expressed by the employee
- document the outcome of these discussions in Section VIII of the PADP form
- sign and date in the blocks immediately following Section VIII of the PADP form.

The completed PADP, including any and all changes made during the year, should be signed and dated by the employee at the end of the Close-Out Meeting (or if applicable, at the end of the management review meeting). The original is then submitted to the HR division Lead/Rep for storage in the employee's personnel file per site requirements.

Copies of the completed PADP should be provided to the employee and also retained by the immediate manager or supervisor.

### **Records**

The record generated by this procedure is Westinghouse Savannah River Company OSR 5-333,

"Personal Assessment and Development Process", (PADP). It is managed in accordance with site requirements.

## **WSRC 5B Human Resources Policies, Practices and Procedures**

### **Procedure 3.13 Americans With Disabilities Act (ADA) Accommodation**

Revision 3 12/28/99

- Purpose
- Scope
- Terms and Definitions
- Responsibilities
  - Division Human Resources (HR) o Employees
  - Equal Employment Operations (EEO)
  - Line Management Procedure
    - 1. Current Employees
    - 2. Interviewing Process
    - 3. Applicants or New Employees
- Records
- References
  - Forms
- Requirements Control System
- Attachments

**Date: 12/28/99**

### **Procedure Manual SB, Human Resources Policies, Practices and Procedures Procedure Revision Summary**

- 1. Procedure and Revision #: 3.13, Rev. 3**
- 2. Procedure Title: Americans With Disabilities Act (ADA) Accommodation**
- 3. Effective Date: 12/28/99**

## **APPENDIX MJ**

**4. Procedure Changes:** Added statement to be consistent with practice - If no vacancy for nonexempt employee within the same grade level and unit exists, the employee is placed in accordance with the Staffing Practice (5B, Practice 2.2, Section 6 & 7)

**5. Training Requirements:** Supervision and employees should become familiar with the new/revised requirements. No additional training is required.

### **Purpose**

The purposes of this procedure are to:

- enable Westinghouse Savannah River Company (WSRC) management to comply with Americans with Disabilities Act (ADA) job accommodation guidelines
- prevent discrimination based on the disabilities of otherwise qualified individuals
- ensure reasonable accommodations are made for otherwise qualified individuals with disabilities
- outline the process for accommodating qualified, disabled employees and/or applicants so they may perform their essential job functions

### **Scope**

The procedure applies to all WSRC employees and applicants.

### **Terms and Definitions**

Terms are defined in Section 4.3, "Glossary of Terms."

### **Responsibilities**

#### **Division Human Resources (HR)**

Division HR is responsible for

- determining, when notified that an accommodation is needed and with medical concurrence, whether an employee is covered under the ADA
- initiating the reasonable accommodation process, for ADA-covered employees

- working with supervision, Equal Employment Operations (EEO) and outside sources such as the Job Accommodation Network, to identify accommodation alternatives
- initiating the Reasonable Accommodation Form (OSR 5-316) and ensuring its completion
- coordinating the search to identify vacant positions for which the employee is qualified if no accommodation can be made in the current job assignment
- notifying EEO of the accommodation request
- preparing a complete accommodation packet to submit to EEO for review prior to accommodation implementation

### **Employees**

Employees with disabilities are responsible for making their need for accommodation known by

- notifying their line management that they can no longer perform any or all of their essential job function(s)
- making Medical aware of this need upon return to work after a disability occurs
- making Medical aware of this need during the periodic medical examination

### **Equal Employment Operations (EEO)**

EEO is responsible for:

- providing technical assistance to division HR throughout the accommodation process, as necessary
- reviewing all ADA packets before accommodation is implemented, to ensure compliance with the law
- requesting reconsideration of an accommodation if the ADA packet is found to not be in compliance with the law

## **APPENDIX MJ**

## **Line Management**

Line management is responsible for

- notifying HR when the need for an accommodation becomes known
- informing the employee, by an informative contact or memorandum, when the accommodation processing is initiated and of the disposition and conclusion of the process
- working with HR as needed to assist in the reasonable accommodation process after EEO approval of the ADA packet

## **Procedure**

The procedure is divided into sections:

1. Current Employees
2. Applicants or New Employees
3. Interviewing Process

### **1. Current Employees**

A. Management contacts division HR when a qualified employee with a disability cannot perform an essential function(s) of their job. Accommodation needs become known by either or both of the following:

- employee requests an accommodation
- WSRC Medical places permanent restrictions on an employee by issuing a revised OSR 2-22, Medical Information Form

Division HR notifies EEO when line management makes the accommodation request known.

## **APPENDIX MJ**

B.Line management works with WSRC Medical, division HR, and the employee to determine precise job-related limitations, listing which essential job functions the individual can no longer perform or can perform with difficulty. A Reasonable Accommodation Form (OSR 5-316) is initiated at this point, based on available information.

C.Line management uses an informative contact (OSR 5-317) to notify the disabled employee of the initiation of the Reasonable Accommodation Process.

D.Division HR makes field visits to aid in determining potential accommodations and determines what assistance is available to allow the employee to perform essential job functions. All potential accommodations and their effectiveness are listed on the Reasonable Accommodation Form (OSR 5-316). If necessary, EEO and organizations such as the Job Accommodation Network are consulted for technical assistance.

E.Division HR initiates an ad hoc Accommodation Committee consisting of line management, Medical, HR Policy and Practices personnel and others, as appropriate, to discuss all possible accommodations. Issues of direct threat and undue hardship are considered at this point.

Accommodation in the employee's current position(s) must be considered before beginning any consideration of moving the individual to another position for which he or she is qualified. In some cases, the individual may be temporarily accommodated until all options have been thoroughly explored by the decision-making group and a more permanent solution reached.

## **APPENDIX MJ**



F.If employees cannot be reasonably accommodated in their current positions, the following steps are taken, in order:

1. Efforts are made to find vacant positions, in the same grade level, for which they are qualified and where they can perform essential job functions, with or without accommodation. If no vacancy for employees within the nonexempt roll within the same grade level and unit exists, the employee is placed in accordance with the Staffing Practice (5B, Practice 2.23 Sections 6 and 7).
2. If a lateral move cannot be made, an attempt is made to place the employee in a lower-graded position for which he or she is qualified and where the employee can perform essential job functions, with or without accommodation. If no vacancy for employees within the nonexempt roll within the same grade level and unit exists the employee is placed in accordance with the Staffing Practice (5B, Practice 2.23, Sections 6 and 7). Non-exempt employees placed in lower-graded positions are eligible for "feathered pay reduction" (5B,2.11, Section 1).

NOTE: If more than one ADA candidate, the situation may warrant canvassing according to the established seniority system (site seniority).

G.The Accommodation Committee:

agrees on the most appropriate accommodation for the employee and WSRC

- completes the accommodation packet
- submits the accommodation packet to EEO for review before implementation

H. EEO reviews and approves the accommodation packet. Line management notifies the disabled employee, by informative contact or memorandum, of the accommodation to be provided and its effective date.

## **APPENDIX MJ**

I.The individual may not be considered qualified, and WSRC may medically discontinue, if it is determined no reasonable accommodation can be made. Refer to 5B, Practice 2.9, "Termination Practices."

## **2.Interviewing Process**

A.During the interview process, the interviewer may:

- seek notice and/or documentation of accommodations requested, relative to skills tests, etc
- ask whether the applicant can perform the essential functions of the position, with or without reasonable accommodation

B.If an applicant alerts WSRC about an accommodation need in the application process, i.e., during testing or an interview, the interviewer, manager, or HR personnel immediately contacts EEO so that the issue can be addressed in appropriate compliance with ADA requirements.

## **3.Applicants or New Employees**

A.If no reasonable accommodation is available in the position for which an individual is hired, reassignment to another position is not available, refer to 5B, Practice 2.9, "Termination Practices."

B.WSRC may become aware of an accommodation need for newly hired employees or applicants in one or both of 2 ways:

- after the post-offer examination is performed, Medical imposes, and documents on the Medical Information Form, OSR 2-22, certain permanent medical restrictions
- the individual requests an accommodation

When the need for accommodation is identified, line management contacts their division HR, who in turn notifies EEO.

## **APPENDIX MJ**

**C. Line management:**

- asks the disabled individual if he or she has any accommodation suggestions to be considered
- discusses the issue of continued employment being contingent upon identifying a reasonable accommodation
- notifies the disabled individual, by informative contact (OSR 5-317), that the Reasonable Accommodation Process is being initiated

D. Line management works with division HR, Medical, and the disabled individual to determine precise, job-related limitations and listing which essential functions of the job the individual needs accommodation to perform. A Reasonable Accommodation Form (OSR 5-316) is initiated at this point.

**E. Division HR:**

- makes field visits to aid in determining potential accommodations
- determines what assistance is available to accommodate the individual and allow performance of essential job functions
- contacts, as necessary, organizations such as EEO and the Job Accommodation Network for technical assistance
- list all potential accommodations, and their effectiveness, on the Reasonable Accommodation Form (OSR 5-316)

F. Division HR initiates an ad hoc Accommodation Committee consisting of line management, medical, HR Policy and Practices and others as appropriate to discuss all possible accommodations. Issues of direct threat and undue hardship are considered at this point.

**APPENDIX MJ**

In some cases, the individual may be temporarily accommodated, depending on the type and severity of the disability and the essential job functions, until all options have been thoroughly explored by the decision-making group and a more permanent solution reached.

#### **G The Accommodation Committee**

- agrees on the most appropriate accommodation for the individual and WSRC
- documents the proposed accommodation in the accommodation packet
- submits the accommodation packet to EEO for review before implementation

H. Individuals that cannot be reasonably accommodated are notified and processed under 5B, Practice 2.9, "Termination Practices."

I. EEO reviews and approves the ADA packet. Line management notifies the disabled employee, by informative contact (OSR 5-317), of the accommodation to be provided and its effective date.

#### **Records**

Medical records, including employee medical and disability history and diagnosis, are maintained as confidential files, separately from other personnel records, in accordance with site requirements.

EEO maintains the official documentation of reasonable accommodation cases.

Records generated as a result of implementing this procedure are processed in accordance with Procedure Manual IB, MRP 3.31, "Records Management".

## **APPENDIX MJ**

## **References**

- DOE 1324.5B, Records Management Program
- Corporate Directive, CDC-2503, October 1990, Westinghouse Electric Corporation, "Equal Employment Opportunity"
- Corporate Directive, CDC-2505, January 1991, Westinghouse Electric Corporation, "Privacy of Personal Information"
- Procedure Manual J\_B, MRP 3.31, "Records Management"
- Procedure Manual 5B, Practice 2.9, "Termination Practices"  
Procedure Manual 5B, Practice 2.11, "Pay for Time Worked"
- WSRC-EM-96-00023, WSRC Retention Schedule Matrix (RSM)
- annual WSRC Disabled/Veterans policy letter

## **Forms**

OSR 5-316 WSRC Reasonable Accommodation Form

OSR 5-317 Employee Information Record

## **Requirements Control System**

None

## **Attachmentss**

None

## **APPENDIX MJ**

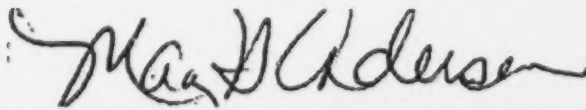
Mary Hamilton Anderson, M.D  
Pediatric and Adolescent Allergy  
2315 Central Avenue  
Augusta, Ga. 30904  
Phone (706) 737-0303  
July 11, 2001

To Whom It May Concern:

Nigel Lawrence is a patient I have followed for many years with significant asthma and allergies. He is allergic to pollens, dust mite, and molds and has frequent sinus infections. He has to stay on regular medications for his asthma to include Albuterol jet nebulizer treatments, Advair Diskus, Singulair, and frequent oral steroids to keep his symptoms under control. Nigel has been hospitalized many times for exacerbation of his asthma with numerous severe episodes requiring admission to the intensive care unit.

Please feel free to contact my office with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary H. Anderson", written over a horizontal line.

Mary H. Anderson, M.D. MHA/mh  
Medical Services Provided by Allergy Partners, PA.



MAR 10 2006

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**In The  
Supreme Court of the United States**

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**CHRISTOPHER LAWRENCE,**

*Petitioner,*

v.

**WESTINGHOUSE SAVANNAH  
RIVER COMPANY, LLC,**

*Respondent.*

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**On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Fourth Circuit**

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**BRIEF IN OPPOSITION TO PETITION  
FOR A WRIT OF CERTIORARI**

---

**CHARLES F. THOMPSON, JR.  
MALONE, THOMPSON &  
SUMMERS LLC  
1312 Gadsden Street  
Columbia, SC 29201  
803-254-3300**

*Counsel of Record  
for Respondent*

## QUESTIONS PRESENTED<sup>1</sup>

1. Has Lawrence made out any of the required "compelling reasons" required for this Court to review the decisions of the lower courts?
2. Does Lawrence have any grounds for claiming the lower courts ruled against him because he is an African-American Pro Se litigant and can these issues be raised before this Court?
3. Does Lawrence have any basis for his objections to the Magistrate Judge's discovery rulings and the Magistrate Judge's method of marshalling facts before he ruled on WSRC's motion for summary judgment?
4. In the event this Court decides to review a question of South Carolina law, did the lower courts err in finding Lawrence failed to make out a claim he had a contract of employment that WSRC violated by discharging him?

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<sup>1</sup> Respondent has not presented an alternative to each of the Statements required to be presented by Petitioner by Sup. Ct. R. 14. Instead it presents alternatives only to those which were omitted by Petitioner or with which it disagrees.

**CORPORATE DISCLOSURE STATEMENT**

Westinghouse Savannah River Company LLC (WSRC) is a wholly-owned subsidiary of Washington Group International. In December 2005, the name Westinghouse Savannah River Company LLC was changed to Washington Savannah River Company LLC.

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## STATEMENT OF JURISDICTION

This case was originally filed claiming breach of contract and racial discrimination. Lawrence abandoned his claim of racial discrimination before the United States Magistrate Judge. The District Court exercised its supplemental jurisdiction of the only remaining claim (the state-law contract claim) and dismissed this claim on WSRC's motion for summary judgment. Lawrence appealed to the United States Court of Appeals for the Fourth Circuit which affirmed the decision of the District Court based on the reasoning of the District Court.

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## STATEMENT OF THE CASE

Lawrence was first employed by WSRC in 1989. (Tab 1, 7).<sup>2</sup> His last job was as a "building operator." It is a building operator's job to set up and monitor production processes. (Tab 1, 53).

Lawrence had a history of poor attendance and issues related to attendance. His employment record is replete with numerous warnings, counselings, and deficient performance reviews noting his consistent failure to meet management's attendance expectations.<sup>3</sup> Throughout his

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<sup>2</sup> This matter was considered by the Fourth Circuit Court of Appeals under its rules regarding pro se appeals under which no Joint Appendix is submitted. References to "Tab" (unless otherwise noted) refer to Westinghouse's Tabbed Attachments to its Summary Judgment Memorandum filed on January 5, 2004. Exhibits begin with the Tab number behind which the exhibit can be found. References to depositions begin with the name of the deponent followed by the deposition transcript number.

<sup>3</sup> See references following.

employment with WSRC, Lawrence was repeatedly warned for being missing from his work area (Tab 3, 47<sup>4</sup>), for failing to let supervision know he was going to be absent (Tab 4, 50), and, in almost every year of his employment, for failing to keep unexcused absences under 40 hours per year. (Tab 5, 60), (Tab 7, 87), (Tab 8, 97), (Tab 9, 101), (Tab 10, 106), (Tab 11, 116).

Throughout his employment, and in this lawsuit, Lawrence asserted that management could not require him to keep his unexcused absences (which does not include excused days, vacation days, or holidays) under 40 hours per year because no WSRC policy authorized such a standard. (Tab 1, 16, 33-34). He therefore claims that he could not be punished for any absences, no matter how great, if there was no policy statement specifically setting an exact attendance limitation. (Tab 1, 20, 33-34). Lawrence felt that, as long as he had an excuse (not necessarily medical), he could be absent however much he wanted and management could not instruct him otherwise. (Tab 1, 36, 38). Lawrence was belligerent and insubordinate toward supervision and management on these issues. (Tab 14, 205).

In February 2000, Lawrence was assigned to a new division (NMSS) where he continued his refusal to comply with attendance expectations. (Tab 15, 216). His new supervisors and manager, however, were less tolerant with his intransigence and increasingly sought to force Lawrence to comply with their attendance expectations.

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<sup>4</sup> This number refers to the Defendant's counsel's document numbering system and it is included in the event it becomes necessary to put the document in the context of other documents.

Amazingly, within the first twelve days in his new job, Lawrence was late three consecutive days and took six short vacations without giving the required 24-hour notice. Concerned that Lawrence was off to a bad start regarding his attendance, his new manager gave him an "advisory contact" about keeping his absences under control and notifying him that he must adhere to the absence notice requirements. (Tab 21, 290-291).

By April 2000, Lawrence had exceeded his allowed absences. He was therefore warned that any further unexcused absences would result in discipline and future absences must be limited to genuine emergencies. (Tab 22, 302).

On April 17, 2000 Lawrence was allowed to go to the medical department because he was complaining of a sore throat. When he did not return to work the next day or the one after that, his supervisor called the medical department seeking information about his absence. Medical informed management that they sent Lawrence to an off-site clinic on April 17 and did not know anything else. Lawrence ended up being out for a week and never did bring a doctor's note. (Tab 23, 301).

In May 2000, Lawrence told the medical department that he is going to have a bunionectomy in August 2000. (Tab 24, 780).

On May 10, 2000 management gave Lawrence yet another contact informing him that his attendance was unacceptable and that any future medical absences must be authorized by a doctor's note and that he must check in to the site medical department if he had further medical absences. He was also informed that his future attendance was subject to monitoring. (Tab 25, 313).

On June 5, 2000 Lawrence asked for time off to attend to an "emergency" at a California factory that supplies his clothing store business. (For most of the time Lawrence worked for WSRC, he also owned and operated a men's clothing store.) This was his second absence since the May contact. After this, management instructed all its supervisors that they were not to give Lawrence any more excused time off. (Tab 26, 330, 331, 328).

On June 7, 2000 Lawrence got into a heated argument with his manager because he thought the manager was harassing him about being away from his assigned work station. Lawrence yelled at his manager and became angry. As a result of the confrontation, Lawrence was warned that he must remain civil to his management. (Tab 27, 332-334).

On July 28, 2000 Lawrence was absent from work to get blood work done in preparation for his bunionectomy.<sup>5</sup> When he did come to work, he was excused to go home because he said he felt groggy. (Tab 24, 780). He was absent the next day as well. Although Lawrence was going out to surgery on August 1 and a WSRC doctor knew this,

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<sup>5</sup> This was the second time Lawrence was out of work for a bunionectomy. The first time, in 1998, was remarkably parallel in facts to his second leave from work to get a bunionectomy. In 1998, he told his supervisor he would be out of work for eight weeks. (Tab 18, 262, 775). The WSRC medical department said eight weeks was excessive, however, advised management not to do anything until Lawrence brought a doctor's note in. (Tab 18, 775). Lawrence's doctor's note had working restrictions but did not preclude Lawrence from working. (Tab 18, 775). Lawrence was upset and could not seem to understand that WSRC could expect him to work if WSRC had a job he could do with the restrictions. (Tab 19, 262, 777). Lawrence also complained that he should not be expected to come to work because he could not drive his manual transmission car. (Tab 18, 776).

Lawrence did not remind his supervisor that he was going out and did not give the WSRC doctor or his supervisor documentation of how long he would be out. In fact, Lawrence didn't even tell anyone who his doctor was or where the bunionectomy was being performed. The following week, Lawrence still had not communicated with medical or his management. Lawrence admitted that, at this point, WSRC had no way of knowing his condition or when he would be back. (Tab 1, 84-86). Lawrence claimed he was not required to check in because no WSRC policy required this. (Tab 1, 86). Medical therefore began calling Lawrence to try to find out his status. (Tab 24, 780). WSRC doctor Dr. Botnick felt that three weeks leave should be more than sufficient to recover from a bunionectomy. Dr. Botnick eventually tracked down Lawrence's doctor and found out that Lawrence was going to be evaluated on September 7, 2000 and given return to work restrictions. (Tab 24, 780). September 7 came and went. On September 11, Lawrence's supervisor (Ralph Thigpen) made repeated calls to Lawrence at his home, his mother's home, and his ex-wife's home. (Tab 28, 351-352). Lawrence admitted that he was refusing to answer phone calls from Thigpen, Dr. Botnick, and others because he did not want to talk to them. (Tab 1, 106). When the supervisor finally reached Lawrence, Lawrence reacted angrily, called his supervisor a "peon" who could not tell him what he could do. (Tab 1, 102).

The doctor's note that the WSRC medical department eventually received (on September 25) indicated that Lawrence *could* return to work. (Tab 29, 354) (Tab 1 Lawrence p. 83). The note indicated that Lawrence had restrictions if he did come back to work but it did not prohibit him from working. When told he needed to return



to work, Lawrence balked. (Tab 1, 93-100). Lawrence refused to accept that WSRC could expect him to come into work if WSRC could accommodate the restrictions. (Tab 1, 89-90). Although the restrictions permitted him to come to work, Lawrence refused in part because he could not drive his standard transmission car. (Tab 1, 89). Again Lawrence refused to answer his phone. Dr. Botnick left numerous phone messages that Lawrence was expected to be at work on September 11. (Tab 30, 782). Because Lawrence did not respond, WSRC faxed a notice to Lawrence telling him that WSRC was stopping Lawrence's short-term disability pay. According to Lawrence's own testimony, this got his attention (Tab 1, 99) and Lawrence answered Dr. Botnick's call on September 12, 2000. Lawrence again complained he should not be required to come to work because he had not been fully released by his physician. (Tab 1, 89-90, 95-98). Lawrence admitted, however, that the only doctor's note given to WSRC contained only restrictions – not a work exclusion. (Tab 1, 89). Instead of immediately coming back to work, however, Lawrence was absent from work on September 12 and 13 allegedly because of dental surgery. (Tab 31, 353).

Lawrence did not return to work until September 22, 2000. The day he returned to work, his supervisor found him asleep when he was supposed to be working. (Tab 32, 420). Lawrence admitted he was frequently asleep at work. (Tab 1, 104-106). Lawrence told his supervisor to leave him alone before he did something he would regret. (Tab 32, 420).

Lawrence went out of work again complaining of pain from the dental surgery.



Based on Lawrence's refusal to keep management informed, refusal to return to work despite his doctor indicating he could return, and insubordination, management placed Lawrence on probation and told him that he must obtain approval from one of two specific managers for any future leave, must schedule medical appointments off-hours, and must perform his job with no further problems or he would be terminated. (Tab 33, 455, 470-473).

By July 2001, Lawrence had again exceeded his allowed time off. However, Lawrence continued to miss work after this due to various medical complaints.

On August 26, 2001 Lawrence called his supervisor to report he would be late due to his son's sickness. (Tab 34, 655). The following day, Lawrence asked a co-worker to tell his supervisor that he would be out two or three days due to yet another sinus infection. Lawrence admitted that he was instructed to tell only one of two specific managers or his supervisor about absences, however, he contended that management could not tell him who to report absences to because WSRC policy does not authorize such a restriction. (Tab 1, 100, 129). Lawrence said he would be at his mother's house. Thigpen reported to higher management that Lawrence had disobeyed his instructions about whom to contact regarding absences. Thigpen was unable to reach Lawrence by phone. After repeated messages, Lawrence finally called his supervisor back. He became angry, yelled, cursed his supervisor, and told him he would deal with him when he got back. (Tab 35, 664-665). Lawrence admitted in his deposition that he spoke to Thigpen in this manner. (Tab 1, 129-130).

Based on this complete disregard for his employment and contempt for his supervision and instructions, WSRC

decided to terminate Lawrence's employment effective August 31, 2001. When Lawrence attempted to return to the site, he was escorted away by security personnel. Because Lawrence was terminated, he was not allowed back onsite and a representative of WSRC went to Lawrence to return his belongings. (Tab 1, 132).

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## ARGUMENT

### **This Case Does Not Present Any Compelling Ground for Supreme Court Review**

Under Supreme Court Rule 10, a petition for writ is granted only for "compelling grounds." Rule 10 lists the most common compelling grounds as: (1) a question on which the courts of appeal are in conflict; (2) a state court has issued a decision on a federal question that is in conflict with decisions of other state courts; or (3) a state, or federal court of appeals, has decided an important federal question that should be reviewed by the Supreme Court or is in conflict with a prior decision of the Court.

Rule 10 specifically provides that review is "rarely granted" when the issue is only an alleged misapplication of law or procedural error.

Lawrence has not raised any issue that Rule 10 recognizes as compelling. In fact, the grounds he raises are solely alleged misapplication of law to fact or procedural error. He has alleged, without basis, racial bias, misapplication of South Carolina contract law, and procedural errors by the lower courts. None of the reasons he raises warrant review by this Court.

**Lawrence's Claims of Racial Bias Against  
Him as a Pro Se Petitioner are Wholly  
Without Merit and are Time-Barred**

A consistent theme throughout Lawrence's Petition is that the Magistrate Judge, the District Court Judge, and the Judges of the Fourth Circuit Court of Appeals were biased against him because he was an African-American pro se litigant. However, other than the fact that these courts consistently ruled against him, and his allegations that they committed various procedural errors, he has no evidence to suggest such bias.

If Lawrence thought that the judges involved in this matter were biased against him, he was required to file a motion to recuse. He never filed such a motion with any of these courts. To the extent Lawrence's objections might be considered a request to recuse, those requests were untimely – coming only after adverse rulings against him. “A motion to recuse must be filed promptly after the allegedly disqualifying facts are discovered.” *Hinman v. Rogers*, 831 F.2d 937, 938 (10th Cir. 1987). “Granting a motion to recuse many months after an action has been filed wastes judicial resources and encourages manipulation of the judicial process.” *Willner v. Univ. of Kan.*, 848 F.2d 1023, 1029 (10th Cir. 1988).

In any event, all of Lawrence's illustrations of alleged bias are merely adverse rulings by the judges (e.g., denial of motions to compel, granting of summary judgment, denial of request to extend time for discovery, denial of requests for subpoenas). Adverse rulings alone do not constitute grounds for disqualification. While they may be proper grounds for appeal, they are not grounds for requesting reversal based on bias. *Liteky v. United States*, 510 U.S. 540, 555 (1994). Lawrence's allegations of racial

bias are conclusory and unsupported. “[U]nsupported, irrational or highly tenuous speculation” is an inappropriate ground for recusal or appeal on the basis of bias. *Hinman v. Rogers*, 831 F.2d at 939.

### **Lawrence’s Contentions of Procedural Errors are Without Basis**

Many of the issues in Lawrence’s Petition have to do with his perception that the Magistrate Judge erred in making discovery rulings and in marshalling the evidence so that the judge could issue a Report and Recommendation on WSRC’s motion for summary judgment.

In order to understand why the Magistrate acted as he did, it is important to review the extraordinary number of filings that Lawrence submitted. The following history illustrates a *partial* view of Lawrence’s prolific filings to the court. Following discovery, on January 5, 2004 WSRC filed a motion for summary judgment and memorandum in support. Lawrence filed a response on January 21, a second response on January 27, a third response on January 28, an amended response on February 5, and supplements to his response on February 10. WSRC replied to these various filings (once) on February 17. Lawrence followed this reply with a response on February 20, a motion on March 3, supplemental materials on April 13, and a supplemental brief on May 25. Many of Lawrence’s submissions were very lengthy and were accompanied by hundreds and hundreds of pages of attachments.

Faced with this onslaught, on June 8, 2004, the Magistrate Judge ordered the parties to appear for a hearing regarding summary judgment. At that hearing, the Judge ordered the parties to confer (at the hearing)

and list the facts upon which they could agree. The Judge did this to force the parties (really Mr. Lawrence) to focus on the specific facts and arguments that the court needed to consider and to consolidate the numerous filings. The parties conferred and, from notes prepared during the conference, read the uncontested facts into the record at the same hearing. The judge ordered that WSRC was to reduce this statement to writing and file it and that both parties were to submit statements of contested fact. (Tr. p. 6).<sup>6</sup> Each party was permitted a time to respond to the statement of disputed facts and to file briefs based on the statements of contested and uncontested facts. Contrary to Lawrence's allegations, the court never said it would rely only on the statement of undisputed facts to rule on the motion for summary judgment nor did it say that the parties were limited to the statements of fact. To the contrary, the judge noted on page 8 of the transcript that the parties could argue (in the briefs) "a particular fact . . . outside the agreed statement of facts." The judge even allowed for the possibility that the parties may, in their briefs, argue against a fact that was previously agreed to. (Tr. p. 21).

As directed by the court, WSRC filed a new summary judgment motion and memorandum in response and statements of uncontested and contested facts. Lawrence filed a response to the motion and filed a memorandum alleging the statement of uncontested facts was not accurate in some details. WSRC filed a response conceding that some inadvertent errors were made in the statements. On July 17, 2004 the Magistrate Judge entered a

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<sup>6</sup> "Tr." refers to the transcript of the hearing.

recommendation that the district court grant WSRC's motion for summary judgment. Lawrence filed untimely objections to the Report and Recommendation and WSRC responded. District Court Judge Bryan Harwell entered an order on March 31, 2005 granting the motion for summary judgment.

Lawrence alleges that the Magistrate Judge committed several errors and was misled, and biased toward, WSRC's counsel. These allegations are outrageous and spurious. Lawrence begins with the argument that there were several differences between the statement of uncontested facts that was read into the record and the subsequent written statement that was filed. These differences were inconsequential, irrelevant and, in any event, they were brought to the attention of the court.

For example, Lawrence alleges that the word "negative" was changed to "skeptical" in the statement of uncontested facts. The word was referring to the attitude of a WSRC doctor toward Lawrence's alleged medical condition. The word was indeed inadvertently changed. WSRC's counsel advised the court, in its filing dated July 7, 2004 that the wrong word was used. Therefore the judge was fully aware of the error. In any event, there is little difference in the meaning of the words and the statement of fact containing the word was not used by the Magistrate or District Judge in reaching their decisions.

Lawrence next complains that the statement containing the phrase "Lawrence was warned that unexcused absences would result in discipline, and future absences would be limited to genuine emergencies." This statement was inadvertently omitted from the written statement.



However, Lawrence did not take advantage of the opportunity to point out the omission (although he did challenge other parts of the statement). In any event, the fact was not relevant to the summary judgment motion and did not relate to any of the grounds for granting the motion for summary judgment.

Lawrence next challenges the omission of the words "by the WSRC medical department." Again, the omission was inadvertent, did not change the meaning or effect of the fact statement and did not relate to any fact relied upon by the court to grant the motion for summary judgment.

Lawrence challenges a change in wording concerning the description of WSRC management concern about Lawrence's outside business and a statement concerning DOE Order 350.01. The changes did not affect the meaning of the statement of fact and, like the other statements Lawrence challenges, do not relate to any fact relied upon by the court to grant the motion for summary judgment.

Lawrence next argues that the Magistrate Judge's orders were contrary and confusing to him and that the briefing deadlines favored WSRC. However, Lawrence fails to point out any procedure ordered by the Magistrate Judge that violated any rule of civil procedure or that was extraordinary. In particular, Lawrence cannot seem to understand that the Magistrate never intended to restrict himself to the statements of uncontested facts to make his ruling. If he did this, Lawrence could simply block summary judgment by refusing to agree to a fact that should have been uncontested. The Magistrate Judge could have, and did, rely upon some issues contained in WSRC's statements of disputed facts because the fact actually

should not have been disputed by Lawrence. For example, if he admitted the fact was true in his deposition.

Lawrence's brief contains a litany of accusations against the Magistrate Judge that are entirely conclusory. Because he cites no specific evidence to support his conclusions, they cannot be addressed.

Lawrence appears to challenge the Magistrate Judge's citations in footnotes 107 through 109 and the magistrate's use of material in WSRC's first memorandum in support of its motion for summary judgment. Lawrence's objection is that the materials were not discussed in any of WSRC's previous pleadings. However, the material was clearly submitted (as the footnote reference indicates) in WSRC's exhibits to its motion for summary judgment. Perhaps Lawrence's objection is that the material was not made part of the statements of contested or uncontested fact. However, as stated above, the magistrate never stated he would limit himself to those statements and, in fact, allowed for the parties to cite to other information.

Lawrence challenges the Magistrate Judge's rulings against him on his requests to compel and for extensions of time. However, he has not denied that the grounds for denying the motions (that his filings with the court violated local rules) were accurate. For example, regarding his motions to compel, Lawrence admitted, in the hearing, that he did not file a certificate of service with the motion that was filed with the court. Therefore, he has no ground for citing this alleged error before this Court. In any event, if Lawrence objected to a discovery ruling by the Magistrate Judge, his proper course was to appeal the decision to the district court. He never did this. In fact, he never

cited these discovery rulings as a grounds for his appeal to the Fourth Circuit Court of Appeals.

Lawrence argues that the Magistrate Judge failed to review the thousands of documents that Lawrence submitted before ruling on WSRC's motion for summary judgment. However, following the hearing, the Magistrate Judge allowed Lawrence to draw the court's attention to all facts and arguments that Lawrence wished to submit. The Judge asked only that the parties first submit statements of uncontested and contested fact. Therefore, Lawrence had ample opportunity to submit whatever he wished. Furthermore, it is Lawrence's burden to not merely rest on his pleadings but to point out facts that raise a material issue. Fed. R. Civ. P. 56(e). In any event, Lawrence failed to raise this issue in his objections to the Magistrate Judge's Report or to the Fourth Circuit Court of Appeals.

**The Lower Courts Did Not Misapprehend,  
or Misapply, South Carolina Law on Employment  
Contracts that Arise from Employee Handbooks**

The general rule in South Carolina is that employment is "at will" and employees, or their employers, may end the relationship at any time, for any reason, or for no reason. *Small v. Springs Industries*, 388 S.E.2d 808, 810 (S.C. 1990); *Prescott v. Farmers Telephone Cooperative, Inc.*, 516 S.E.2d 923, 925 (S.C. 1999). An employer can contractually alter this at-will relationship by issuing an employee handbook that, by its language, limits the employer's right to discharge an employee. However, for a contract to be created, the employee must be aware of promises in the handbook, must have relied on (and continued work in reliance on) those promises, and the

promises must restrict the right to discharge. Finally, of course, there must be some evidence the promise was breached in discharging the employee.

The handbook exception to the at-will employment rule is based on the theory of unilateral contract. *Small v. Springs Industries*, 357 S.E.2d 452 (S.C. 1987). A unilateral contract offer requires that the promissory language in a handbook be manifestly and intentionally communicated to the employee. Only then can an employee accept the offer, and provide consideration, *by relying on it* and continuing to work. *Small*, 357 S.E.2d at 454. ("Small's action in forbearance *in reliance on* Spring's promise was sufficient consideration to make the promise legally binding.") (emphasis added); *Taylor v. Cummins Atlantic*, 852 F. Supp. 1279 (D. S.C. 1994), *aff'd*, 48 F.3d 1217 (4th Cir.), *cert. denied*, 116 S.Ct. 176 (1995)) (the employee *must be aware* of the alleged promise and rely on it.<sup>7</sup>)

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<sup>7</sup> There are many cases from other states that specifically hold an employee must have been aware of the promissory language in the handbook. *Decker v. City of Wyandotte*, 2002 WL 31956958 (Mich.App. 2002); *Eerdmans v. Maki*, 573 N.W.2d 329 (Mich. 1997); *Birmingham Parking Authority v. Wiggins*, 797 So.2d 446 (Ala. 2001); *Frick v. Univ. Hosp. of Cleveland*, 727 N.E.2d 600 (Ohio 1999); *Irvin v. Community Bank*, 717 So.2d 369 (Ala. 1997); *Williams v. Precision Coil, Inc.*, 459 S.E.2d 329 (W.Va. 1995); *Rahrs v. Nebraska Public Power Dist.*, 1995 WL 91557 (Neb. App. 1995); *Crisco v. Board of Educ. of Indian River School Dist.*, 1988 WL 90821 (Del. 1988); *Duldulao v. Saint Mary of Nazareth Hosp. Center*, 505 N.E.2d 314 (Ill. 1987). Although a South Carolina court has not specifically held awareness is required, separate South Carolina courts have held the employee must continue employment *in reliance* of the handbook language and, in other contexts, that one cannot rely on something one is unaware of. *Towles v. United Health Care*, 524 S.E.2d 839 (S.C. App. 1999) (must be reliance); *Prescott v. Farmers Telephone Cooperative, Inc.*, 516 S.E.2d 923, 925 (S.C. 1999) (must be reliance); and *Williams v. Texas Co.*, 24 S.E.2d 873,

(Continued on following page)

Therefore, a handbook promise that exists, but the plaintiff does not know about, does not alter the at-will relationship.

To create a contract, a handbook must also make a promise that the employee is entitled to something related to discharge. This is explained, for example, in the case of *Bookman v. Shakespeare*. Shakespeare's written policy promised employees it would investigate all complaints of harassment carefully. Bookman got into a fight with a co-worker because the co-worker was sexually harassing her. 442 S.E.2d 183 (S.C. App. 1994). She claimed Shakespeare violated its written promise to investigate all sexual harassment complaints "promptly and carefully." If they had made a careful investigation, she alleged, the fight would not have occurred. Although the court found that Shakespeare may have breached its promise to investigate carefully, the court held that a promise to investigate "carefully" does not restrict the employer's right to discharge. Shakespeare was free to terminate Bookman because the "careful investigation" promise was not a promise that limited Shakespeare's right to terminate at-will.

The South Carolina Court of Appeals reached the same legal conclusion in *Prescott v. Farmers Telephone Co-op., Inc.*, 491 S.E.2d 698, 702 (S.C. App. 1997) (rev'd on other grounds 516 S.E.2d 923 (S.C. 1999)). In *Prescott*, the company handbook listed types of conduct that could result in discipline. The Farmers Telephone handbook also promised that employees could have the termination

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878 (S.C. 1943) (must have knowledge of the facts for there to be reliance).

decision reviewed by higher levels of management. Critically, the court held, Prescott did not point the court to any language in the handbook promising pre-termination warnings or other procedures. Therefore, the court noted, the case was unlike previous South Carolina handbook cases that dealt with promises of pre-termination procedures. A promise concerning review after the decision was made, the court held, did not limit the right to discharge. The court also held that the listing of conduct that could result in discipline, without promising a certain procedure before discipline, did not limit the right to discharge. *See, also, Epps v. Clarendon County*, 405 S.E.2d 386 (S.C. 1991) (a handbook that did not address pre-termination procedures did not create a contract).

In every handbook case in which the South Carolina Supreme Court has found a jury question, language in the handbook restricted the *pre-discharge* procedure. For example, in *Small v. Springs*, the handbook stated there would be four warnings before discharge and only one was given. 357 S.E.2d 452 (S.C. 1987). In *Jones v. General Electric*, the disciplinary policy stated that offenses "with repetition will lead to disciplinary time off and/or discharge." 503 S.E.2d 173, 183 (S.C. App. 1998). Most recently, in *Conner v. City of Forrest Acres*, the handbook stated "employees shall be treated fairly and consistently," and "discipline shall be of an increasingly progressive nature." 560 S.E.2d 606, 611 (S.C. 2002). The South Carolina Supreme Court has never held that the mere recitation of types of discipline, or that promissory language in a handbook that does not relate to the discharge procedure, is enough to create a jury question on an alleged promise to follow certain procedures before discharge.



Because his Complaint was vague, counsel for WSRC carefully examined Lawrence in his deposition about what policies he thought were violated. In his deposition, Lawrence stated that WSRC policies were violated because he was denied due process under WSRC policy 2.9, because he was denied an exit interview, and because his discharge was not approved by the WSRC president. (Tab 1, 132-139). Lawrence testified that he did not know of any other policies that were violated. (Tab 1, 139).

In Lawrence's petition, he alleges that WSRC policy 2.7 was breached. Lawrence raised this issue for the first time to the Fourth Circuit Court of Appeals. He never raised it to the District Court or to the Magistrate Judge. Lawrence never made this assertion in his deposition nor did he argue in any of his numerous filings that policy 2.7 had anything to do with his discharge.

Lawrence did mention, on page 5 of his objections to the magistrate judge's report and recommendation that WSRC (1) should have removed any counselings over one year old from his personnel file and, (2) on page 28 of his objections that a step system of progression toward termination is included within policy 2.7. However, he did not say what counselings had not been removed or that an old counseling was relied on by WSRC in terminating him or that WSRC did not follow certain required steps. His allegation was entirely conclusory and untied to any fact leading to his termination. In addition, these arguments were raised for the first time in the objections and were not argued to the magistrate. In addition, the arguments he raises now regarding policy 2.7 are not the same as those raised in the objections (vague as they are). Lawrence cannot raise an argument now that was not presented in his objections to the magistrate's report and

recommendation. See, e.g., *Cooper v. Ward*, 149 F.3d 1167 (4th Cir. 1998) (unpublished) ("The timely filing of specific objections to a magistrate judge's findings and recommendations is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned that failure to object will waive appellate review. See *Thomas v. Arn*, 474 U.S. 140, 147-48, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Lawrence waived appellate review by the Fourth Circuit Court of Appeals and this Court by failing to file specific objections after receiving proper notice.

In addition, Lawrence was carefully examined in his deposition about what policies he was aware of and relied on. (See Tab 1 of WSRC's Motion for Summary Judgment pp. 132-139). He did not mention policy 2.7 and cannot now contradict his sworn testimony in response to WSRC's motion for summary judgment. In fact, Lawrence testified that he did not know of any other policies (other than 2.9 and the miscellaneous policies discussed below) that were violated. (Tab 1, 139). Lawrence cannot create a material issue of fact in opposition to summary judgment by submitting factual assertions that contradict his prior sworn deposition testimony. See, e.g., *Hernandez v. Trawler Miss Vertie Mae, Inc.*, 187 F.3d 432, 438 (4th Cir. 1999); *Rohrbough v. Wyeth Laboratories*, 916 F.2d 970, 975 (4th Cir. 1990); *Barwick v. Celotex Corp.*, 736 F.2d 946, 960 (4th Cir. 1984). As the Fourth Circuit stated in *Barwick*, the utility of summary judgment would be greatly diminished "[i]f a party who has been examined at length on deposition could raise an issue of fact simply by submitting an affidavit contradicting his own prior testimony." 736 F.2d

at 960. “[A] genuine issue of material fact is not created where the only issue of fact is to determine which of the two conflicting versions of the plaintiff’s testimony is correct.” *Id.* In addition, Lawrence cannot now raise an argument on appeal that he never made to the magistrate judge nor the district court judge. *See, e.g., Muth v. United States*, 1 F.3d 246, 250 (4th Cir. 1993) (issues raised for the first time on appeal will not be considered.)

Lawrence, has asserted that policy 2.9 and, to a lesser extent, other policies were violated by WSRC. Each of these is addressed in turn.

WSRC Policy 2.9, like the policies discussed in *Prescott*, deals only with the post-termination process. It does not promise any form of process before discharge. (Tab 2). The policy only discusses the administrative process of termination after the termination decision has been made. It contains no substantive promises that limit WSRC’s right to discharge. Although Lawrence has vaguely asserted that 2.9 provides him due process, the policy contains no mention of due process or, in fact, of any pre-discharge process. The policy is analytically the same as the policy in *Prescott*. Both policies deal only with the process of dealing with a terminated employee. Neither promises a pre-termination procedure and therefore neither alters the employee’s at-will status.

Lawrence has raised the question of whether or not the WSRC president approved Lawrence’s termination. Presidential approval is mentioned in Policy 2.9. Policy 2.9 states that the “president or designee” approves discharges. Like the approval/review process in *Prescott*, this review is not a pre-decision limitation on the right to

discharge. Furthermore, it is uncontested that the president's designee approved Lawrence's discharge. Policy 2.9 clearly states that the president can designate his authority to approve discharges. As the affidavit attached to WSRC's summary judgment motion shows, the WSRC president's delegate approved Lawrence's discharge. (Tab 3).

Lawrence also asserts that he was not given the exit interview promised in policy 2.9. Like everything else in policy 2.9, the "exit interview" is a post-termination procedure. The interview's purpose is not even to review the grounds for discharge but is, instead, to "deal with the employment relationships of the terminating employee." Therefore, this provision did not alter Lawrence's at-will status.

Since WSRC's motion for summary judgment was filed, Lawrence mentioned other policies. However, he has never explained how these policies restricted WSRC's right to discharge. In any event, in his deposition, Lawrence specified that his breach of contract claim was based only on 2.9. (Tab 1, 132-139). He specifically testified that there were no other policies he was relying on. (*Id.*). Lawrence cannot create a material issue of fact in opposition to summary judgment by submitting factual assertions that contradict his prior sworn deposition testimony. See, e.g., *Hernandez v. Trawler Miss Vertie Mae, Inc.*, 187 F.3d 432, 438 (4th Cir. 1999); *Rohrbough v. Wyeth Laboratories*, 916 F.2d 970, 975 (4th Cir. 1990); *Barwick v. Celotex Corp.*, 736 F.2d 946, 960 (4th Cir. 1984). As the Fourth Circuit stated in *Barwick*, the utility of summary judgment would be greatly diminished "[i]f a party who has been examined at length in deposition could raise an issue of fact simply by

submitting an affidavit contradicting his own prior testimony." 736 F.2d at 960. "[A] genuine issue of material fact is not created where the only issue of fact is to determine which of the two conflicting versions of the plaintiff's testimony is correct." *Id.*

In any event, none of the other policies mentioned by Lawrence alter his at-will status. Most notably, Lawrence pointed to the "rules of conduct." The WSRC rules of conduct list only the types of conduct that can result in discipline. The rules do not promise any pre-termination procedure. Therefore, they are exactly like the rules of conduct in *Prescott* and do not limit the right of discharge.

Although he did not testify that it formed a part of his contract claim, Lawrence also complained that he could not be required to report to certain managers about his absences because the attendance policy only mentions management in general. (Tab 1, 12-13, 20, 100, 111, 129). As above, however, an instruction to report to a specific person is not a restriction on the right to discharge, *i.e.*, WSRC did not promise Lawrence he would not be discharged if he reported to any manager. In any event, the absence of a written statement authorizing WSRC to instruct employees does not contractually preclude WSRC from doing so. An opposite conclusion would empower employees to refuse any instruction not specifically authorized in writing. For example, no policy says do not punch your supervisor in the nose. It is nonsensical to argue that Lawrence was permitted to do so.

Lawrence also complains that he could not be required to return to work if he had a medical problem. However, no WSRC policy promises this. His medical problems had

restrictions, not work exclusions. In any event, his termination was ultimately caused by repeated refusal to act as instructed.

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**CONCLUSION**

For the reasons stated above, WSRC therefore requests that the decisions of the lower courts be affirmed.

Respectfully submitted,

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This the 10th day of March, 2006



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No. \_\_\_\_\_

FILED

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SUPREME COURT, U.S.

In the  
Supreme Court of the United States

Christopher Lawrence - *Pro Se* Petitioner

v.

WESTINGHOUSE SAVANNAH RIVER  
COMPANY LLC - Respondent

On Petition for Writ of Certiorari  
to the United States Court of Appeals  
for the Tenth Circuit

REPLY BRIEF IN SUPPORT OF PETITION  
FOR WRIT OF CERTIORARI

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### **Introduction**

The Respondent Counsel has repeatedly mislead the Courts with statements which are not forthright truthful. The Respondent Counsel had the imprudence to change evidence within the Court record identified as the Statement of Uncontested Facts on 6/15/04 referenced in the Petitioner's Writ; pgs 12-15 and at (App<sup>1</sup> G, 56A-57A). Therefore, this Court should not honor any portion of the responses without reviewing first and foremost, **all of** the material facts, affidavits, policies, court transcripts, and complete depositions pages<sup>1a</sup>. The Respondent's Brief in Opposition to the Petition for Writ of Certiorari is delusional and absurd on its face.<sup>1b</sup>

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**1** Petitioner's references as follows; Appendix (App), page number (pg), line number (Ln.), specifically (sp), Deposition (Dep).

**1a** Petitioner respectfully requests the Supreme Court to refer to previous pleadings, four different notebook references hereafter referred to as; L1<sup>9</sup>, L2<sup>10</sup>, L3<sup>11</sup>, and L4<sup>12</sup>, submitted to the record on Appeals dated July 5, 2005, June 5, 2005, August 4, 2004 pleading in objection to the Magistrate report, and July 1, 2004 pleadings of importance.

**1b** It orchestrates and willfully provides inaccuracies of the core issues in dispute. Therefore, this Court should articulate stare decisis affirming the precedence of South Carolina Supreme Court concerning contract law of dispute. Additional core issue is the legal fundamental standard for Summary Judgment under Fed. R. Civ. P. (56c). A Summary Judgment is properly denied when there are genuine issues of disputed facts. (App I 99A, I100A, I101A, and I102A.) The final core issue is the bias treatment extended towards Respondent counsel which violated procedural due process.

### **Compelling Reasons for Granting Writ**

**I. The 4<sup>th</sup> District Court has not followed the employment contract laws of South Carolina which provide for an "employee manual" exception to the at-will employment standard<sup>2</sup>**

**II. Reply to Thompson's Jurisdiction and Statement Addressing the Respondent's Statement of Jurisdiction, Counsel has again manipulated the facts of this case. No**

Court record filed by the Petitioner presented a claim of violations of Title VII Civil Rights Act of 1964<sup>2a</sup>

**2 Rule 10(a)** The present 4<sup>th</sup> Circuit Court of Appeals entered a decision conflicting with previous 4<sup>th</sup> Circuit Appeals Court's providing for an "employee manual" exception to the at-will employment standard, which conflicts with the South Carolina Supreme Court. In addition, the lower trial Court departed from the usual course of judicial proceedings or sanctions. See Writ at (pgs.16-21). And, **Rule 10(c)** U.S. 4<sup>th</sup> Circuit Court of Appeals decided and answered a question of important law in South Carolina. This same question should be decided solely by a jury, which conflicts to previous South Carolina Supreme Court Stare decisis. The Supreme Court of South Carolina affirmed that it is the province of the jury to determine the existence and interpretation of a written agreement regardless of the facts of a particular. This is relevant to the decisions and precedence of previous Supreme Court holdings concerning unilateral contract, the relevance and the writings modifying an at-will relationship to an employee Handbook or other writings. These same writings include; (the 5B manual), (DOE contract), and *(a firm offer of employment under handbook policies which do not have clearly written statements of at-will but rather a pre-discharge policy 2.7. Therefore Respondent is bound to follow certain steps before terminating).* The Appeals Court in this case abandoned the holding previously affirmed by the Supreme Court of South Carolina which are: the writings that govern the *at-will* condition between an employer and employee. This fundamental right under South Carolina law regarding disputed inferences of contract and/or handbook is galvanized by affirming the previous Court of Appeals reversal in *Connor, Supra, at 610. Small I & II, Kump, and Prescott*. See also *Small, Supra, 357 S.E. 2d 452, 454*. See *Baril v. Aiken Regional Medical Center 352, S.C. 271, 573 S.E. 2d 830 (2002)*. Former Appeals Courts reversed entries of Summary Judgment granted to companies having the same similarities as this particular case. See reversed cases at Petitioner's Writ (pgs. 20-26).

**2a** The Magistrate at (App I pg. 85a) of Petitioner's Writ recognized the Petitioner's initial complaint was a straightforward contractual action, therefore, the Respondent is confused regarding the case material facts.

**Mr. Thompson violates Magistrate Order June 14, 2004<sup>2b</sup>**

Mr. Thompson cannot use material which was previously abandoned in his first initial Summary of Judgment; dated 01/05/04. **Mr. Thompson intentionally presented untruths and is confused about the facts related to the Petitioner's attendance record.**<sup>2c</sup> Mr. Thompson abandoned his position in each Court.<sup>4</sup> Mr. Thompson served upon the Petitioner on



9/12/03, **inaccurate** information regarding Mr. Thigpen's<sup>3</sup> file. Thompson has been inaccurate regarding the Petitioner's absences, deposition statement of facts, consistently misstated case law concerning unilateral contracts, write-ups, statements from management and human resources.

**2b** Because 06/14/04 was the established timeline for presenting any relevant documentation see (Writ App I pgs 83A-92A) Mr. Thompson cannot revert back using his initial [40-1] summary. However, to the extent this Court wishes to consider his initial [40-1] Summary, the Petitioner's 07/05/05 pleading, attachment notebook exhibits, and memos address Mr. Thompson's [40-1] and [41-1] Summary.

**2c** Respondent Counsel will be referred to as Mr. Thompson.

**3** Mr. Thompson stated the only complaints contained in Mr. Thigpen's file were those sent by Lawrence and neither Employee Concerns nor the EEO groups have records of complaints. The Appeals Court record dated 07/05/05 pg 13, bottom ¶, pg 14, and pg 15 shows this is an absolute lie. Thigpen's behavior history was so chronic, the Respondent's Human Resource recommended Thigpen's removal from a supervisory role. Thigpen was then demoted on or around 10/2004. See (L2<sup>10</sup> notebook, sp. tab 3 exhibits 5, also tabs 1-8). See Earl Brass Dep. at (Book 1 Tab 16 pgs 4, 5, 6, 11, and 12). This same information was presented to the District Court on 7/05/05, pg 14 -15, the Judge stated "it was inaccuracies." See Writ (App C, pg 14A). This also is contrary to the Magistrate Report, and the District Judge's account.

**Mr. Thompson is inaccurate relating to Statement of Case and misleads the Court**

Mr. Thompson's listing of warnings, counseling, and deficient reviews is totally contrary to Writ (App L annual reviews at exhibits listed in the Writ on pgs 17 and 18, or what was specifically presented in the 7/05/05 pleading WSRC-Lawr exhibits 127, 268-270, 280-283, 250-253, 132-135, 212-215, 220-223, 240-243, and 147 which are the Petitioner's job evaluations. See note<sup>4</sup>. **Thompson confuses the facts outside the 5B manual relating to specific excused absences<sup>5</sup>. Thompson is confused and misleads this Court regarding handbook policy relevant to absences<sup>6</sup>.**

4 On pg 8, last ¶ of Mr. Thompson's initial summary [40-1] filed on 01/05/04, stated "the doctor's note that medical eventually received (on 09/25/2000) indicated Lawrence could return to work; Thompson's (Tab 29, 354). Mr. Thompson changed his original position (06/14/04) See Writ (App. I 94A, Ln 23-25 and I 97A Ln 10-11) did not address the issue of returning to work". Even after establishing this as a material fact at Writ (App. I 104A Ln 4 and 5), Thompson again changed his position in the Appeals Court on 6/21/05 to now "the doctor's note indicated that Lawrence could return to work". Pg. 8, top ¶. Now in this Court, on pg 5 bottom ¶, again, against the material facts established in the Magistrate's Court, Thompson has intentionally mislead this Court.

5 Mr. Thompson abandoned these inaccurate allegations then changed his position in the previous Courts 6/24/04 pleading [41-1]. This Court should compare the 1/05/04 pleading [40-1] to the response against the Writ. Mr. Thompson changes and/or manipulates words, adds or removes phrases, sentences, and deposition statements to mischaracterize and/or diminish the true facts of the case. How does Mr. Thompson intentionally and unlawfully omit (Tab 6, 77) from his Statement of Uncontested Facts? He also intentionally omitted this same (Tab 6, 77) in his response to the Petitioners Writ due to the facts being irrefutable; see (7/05/05 pleading on pgs 3 and 4.) Mr. Thompson told the previous Courts "the Plaintiff was warned for failing to let supervision know he was going to be absent." The record shows (Tab 4, 50), "on Monday February 12<sup>th</sup> 1990, Chris Lawrence missed his ride to work-called in at approximately 7am". This is contrary to what the Court record states.

6 Thompson's response at (Tabs 7, 87), (Tab 8, 97), (Tab 9,101), (Tab 10,106) and (Tab 11,116) is inaccurate. See information which contradicts Thompson's responses on (pgs 3 – 6, top ¶, "C") Petitioner's 7/05/05 pleading with supportive notebook exhibits).

Mr. Thompson used negative phrases relating to the Petitioner's absences in both the Court of Appeals and Trial Court. He **did not** ever clarify or classify if the 5B handbook policy 2.12 pgs. 15-17 support vacation and/or excused absences. See requested absences and all types; Writ (App MC, pg.197A), (App MC pg. 217A) under, (2) *Time off Without Pay*, 2.24-*Disability policy* (App MD pgs 220A-252A); 3-3 Make up time (App MF all pgs. **sp 268A**)

**Thompson is confused** about February 2000 absences and presented an untrue account stating the Petitioner claimed he could not be punished for absences<sup>7</sup>.

**Thompson is inaccurate;** Feb., 2000(Tabs 15,216; 21, 290-291); Apr., 2000 (Tabs 22, 302; 23, 301); May 2000(Tabs 24, 780; 25, 313); June, 2000 (Tabs 26, 330, 331, 328; 27, 332-334); and July, 2000 (Tab 24,780)<sup>8</sup>

**Thompson is again untruthful** to this Court regarding June 7, 2000, July 28, 2000, (Tab 1, 84-86), (Tab 1, 86), (Tab 24, 780), (Tab 28, 351-352), (Tab 1, 106), (Tab 1, 102), response<sup>9</sup>

7 To the contrary, Petitioner on pgs 20, 33-34 did not ever speak as Thompson maliciously stated. See Petitioner's Dep. pgs 20-43.

Petitioner's 7/05/05 pleading (pgs 8-13) supports that; No department can enforce a standard policy (not approved nor included) within guidelines of the 5B manual. Again the controlling policies of the 5B: 2.12, 2.24, and 3-3 state; When mgmnt approval is given no consequences for reprimand should follow. **The Court should ask an important question; Were the Petitioner's absences covered under the controlling policies of the 5B manual?**

8 The Petitioner's 7/05/05 pleading (pgs 5 - 13), and exhibits found in Seaborn's (L1<sup>9</sup> notebook memo); Plaintiff's (exhibits 147, 107, and 5), Respondent (policies 2.12, 2.24, 3-3), **substantiates that Mr. Thompson is confused about the true facts of this case.** Regardless of Mr. Thompson's false allegations, the Petitioner's 7/05/05 record shows absences were in fact **granted, excused, approved, and absences were made up.** See the 5B manual policy 2.12 pg. 15 and 16, (Writ App MC Pgs 217A-218A); Writ (App MF pgs 267A-269A).

9 Much of Thompson's confusion is reinforced by not accepting the material facts, 5B handbook policies, misstating case law regarding DOE contract, and Respondent's obligation of compliance. Refer to information contradicting Thompson's account (pg 13 top ¶ through pg 18 at top ¶) of Petitioner's 7/05/05 pleading to the Appeals Court.

To further address Thompson's confusion relevant to the medical issue, it is crucial for this Court to see the 7/05/05 Pleading referencing Dr. Botnick's L4<sup>12</sup> notebook memos and deposition. This will give this Court the facts<sup>10</sup>. **Thompson repeatedly misstated the facts regarding September 22, 2000, July 2001, and August 26, 2001<sup>11</sup>**

10 Botnick lied to both management (tab 2, exhibit 156), and the Court stating he had not spoken to the Petitioner's doctor (Dep pgs. 9-25 inside record L4<sup>12</sup> notebook 9-25 8/15/00 entry at Tab 1 exhibit 785). Botnick secretly wrote dossier notes in Petitioner's medical file, referencing the

Petitioner's business stating he was tracking and targeting the Petitioner (tab 1 med. entries 8/12/00, 8/25/00; exhibits 125, 522), (tab 3, exhibits 289, 280, 284, 286, and For-1, RB-1, RB-2) Botnick falsely assumed Petitioner's medical status (tab 4, exhibit 363). The fax never stated a return to work date, it did address limitations which had not yet been discussed between petitioner and his physician (tab 4, Rb-4). Botnick admitted he did not know Federal law, nor properly reviewed the Petitioner's medical file before making his decision which impacted the post-op procedure. Botnick admitted making occasional errors (Botnick's Deposition pgs 25 and 24).

11 Refer to and consider Thigpen's L2<sup>10</sup> personal animus and behavior issues presented in full detail; (Tab 1, exhibit 22, 24, 29, 30, P3, 14, 6 - 8), (Tab 3, exhibit 20, P2, 950, 951, 21, 5, 926, and 930), (Tab 4, 928, 929, 12, 13, 925, and 927), (Tab 5, 463, 9, 464) communicating; (Tab 6 exhibits). Both Thompson and Thigpen admitted to Thigpen yelling and trying to talk above the Petitioner, see Thigpen Deposition (pg 30-55) also Thompson's Admission in Writ (App. I 98A, Lns 15-17). This is in violation of policy 2.12, 2.24, 3-3, 2.9, (2.7 using old informative contacts, doubling petitioner evaluations for stricter assessment, skipping the corrective actions in the disciplinary process, terminating Petitioner 1 month short of completing inappropriate probation after conditions were met under a stricter program per the 5B pre discharge requirement, Writ (App L exhibits and Writ pgs 17-18). Dave Olson's Deposition (pgs 35-37, 11/12/03) and L3<sup>11</sup> includes testimony which conflicts with Thompson's story and Lott's affidavit. Olson who was facility manager states the termination approval came from the President's office not the Vice president or designee. Which one is it?

### III. This Case Argues Issues Beyond Compelling Grounds for Supreme Court Review<sup>12a</sup>

Most of Thompson's argument is *ad hominem* instead of the material facts of the case. Both District and Appeals Court, established the grounds by not following employment contract laws of South Carolina which provide for an "employee manual" exception to the at-will employment standard. Their decision is contrary to contract law involving unilateral contract, handbook exception and pre-discharge policies governing the at-will relationship in the employer and employee relationship.<sup>12b</sup>

12a Westinghouse, protecting their economic interest [contracts totaling billions; \$3,383,459,753.41, \$8,400,000, 000, \$13,783,459,753.41]; and



other performance base incentives (PBI's), Writ (App K, pgs 107a-143a), affirmed DOE that compliance was in place with regard to hiring and retaining employees. Policy and procedure manuals (5B, 8Q, 5Q, and 2S) Westinghouse used to communicate with employees were given to DOE supporting Westinghouse's compliance and deserving of the contract. Westinghouse signed CFR's binding the obligation. The concept for the structure was to assure DOE that a nuclear facility hired and retained competent employees, and treated them properly. This would strengthen the nation's confidence with respect to nuclear power generating facilities. DOE recognized the potential margin for error in nuclear facilities is considerably less than in conventional facilities. For example, if an explosion occurs at a coal-fired plant you may lose lives in addition to economic losses. However, if an explosion occurs at a nuclear facility, you may lose thousands of lives and the economic losses are incalculable. Westinghouse used Policies and Procedural manuals (P&P) and handbooks to acquire the DOE contract then ignored the provisions within same P&P. This constitutes fraudulent practices causing a breach of contract between DOE and Westinghouse. Petitioner was given (P&P's) and employee handbooks, then told by the Respondent to follow provisions therein. However, this Respondent violated same (P&P's) and employee handbooks, see Writ (pg 20-29) when it did not benefit their needs. Westinghouse employees being incidental beneficiaries of the DOE/ Westinghouse contract having rights which modify the at-will common law under the P&P manuals and employee handbooks which no other "at-will" employee in South Carolina has. Within said rights, Petitioner worked 14 plus years in reliance of said provisions: 2.7, 2.9, 2.12, 2.24(rev 5), 3-3, 2.19, 2.25, and other manuals. Small I and Small II is the breaking point where in Small v. Spring Industries, 388 S.E. 2d 808 (S.C. 1990) South Carolina Supreme Court held: Termination of an at-will employee normally does not give rise to (a) cause of action for breach of contract (citation omitted). However, certain limited situations, an employer's discharge of an at-will employee may give rise to a cause of action for wrongful discharge such as where the at-will status of the employee is altered by the terms of an employee handbook. Small v Springs Industries, 292 S.C. 481, 357 S. E.2d 452(1987) (Small I). In Conner, the Plaintiff was terminated following numerous reprimands over a 12 month period for dress code violations, tardiness, poor work performance, leaving work without permission, and using abusive language. The Court of Appeals reversed the trial Court's Summary Judgment on both breach of contract and bad faith discharge claims. After the Court of Appeals reversal, the Supreme Court of South Carolina affirmed that it is the province of the Jury to determine the existence and interpretation of a written agreement:

(Handbook), (DOE Contract), (DOE Order 350.1) (5B, 5Q, 8Q, and 2S manuals in the provisions therein) in light of the facts of a particular case.

Conner, supra, at 610

Both Supreme and Appeals Court of South Carolina reversed numerous cases involving the same fact pattern. The same questions relating the at-will of an employee were altered or removed from the writings embodied within the 5B handbook, policies, DOE contract.

**Thompson's reliance on Prescott supra is misplaced<sup>13</sup>**

**South Carolina Supreme Court has said that interpretation of the handbook language is an issue for the Jury<sup>14</sup>**

13 The handbook had been presented "several months" after Prescott started work and footnotes in the record indicated the handbook was not presented as part of the record on appeal. The Prescott Court dealt only with the oral representations and found them to be too vague for consideration with regards to a firm offer of employment. In this case, the following is required; Respondent is bound by its agreement to DOE. Federal government is to have suitable personnel manuals per the contract and Order 350.1, to retain a quality permanent work force, and conduct business in accordance to those manuals.

14 Summary Judgment in favor of the Defendants in each cited case was reversed, then same cases remanded for trial by jury. Present case argues same legal matters and is reinforced in the Court transcript, Writ pgs 20-26 (App I pgs 93A- 104A) with (emphasis on App I pg 102A) Magistrate judge stated "the contract is a legal issue but based on a factual predicate."

**Thompson's confusion alleging technicalities**

Thompson is confused and tries to mislead this Court to think the Petitioner never raised an issue of violation to the DOE contract, the 5B manual policies and procedure<sup>15</sup>. Thompson uses misplaced **unpublished** material in *Cooper v Ward*. This is an insult to U.S. Supreme Court by asking it to follow a decision unpublished from the record. Petitioner's objecting to the Magistrate report identified is unlike *Lockert v. Faulkner*, 843F. 2d 1015, 1017-1019(7th Cir. 1988), *Thomas v. Arn*, and the other cited case on pg 20 of Thompson response.<sup>16</sup>



15 In confusion, Thompson states on pg 19 second ¶, that "He (Lawrence) never raised it to the District Court or to the Magistrate", is a bold face lie. Then in Thompson's third ¶ on the same pg 19, he contradicts what he just told this Court. Petitioner's initial cause indicates such 5B manual policies and procedures, Petitioner's pleading 7/01/04, against Thompson's second summary [41-1] indicates on pgs 3 and 14 (c) disciplinary contacts were satisfied which would refer to 2.7 pre-discharge policies within the 5B manual. A vital issue is, if policy 2.7 is apart of the record that supplement from the Magistrate's Court to the Appeals Court, and is 2.7 part of the policies that make up the 5B manual. Thompson failed to mention pg 23 of Petitioner's objection to the Magistrate report dated 8/4/04. Petitioner stated previously he did not meet any unsatisfactory condition applicable to a corrective action, procedural steps, monthly probationary contacts were missed, and the Petitioner was given a stricter review every month rather than every 2 months which violated the 2.7 policy all encompassed the 2.7 Pre-discharge policies. Thompson vehemently opposes 2.7 because it establishes violations to employer and employee obligation and agreement, the 5B handbook and DOE contract. The Petitioner was placed on an inappropriate probation, was given written inappropriate informative contacts and skipped to a higher degree in the pre-discharge policy 2.7 and then given illegal stricter monthly probationary contacts doubling the requirement all derived from the policy 2.7 pre-discharge provision.

16 Petitioner's record on appeal raised the issue of 5B manual, DOE contract, the writings embodied in the provisions of the 5B manual and both the magistrate and district judge recognized the existence of the 5B manual and other policies therein but sought to interpret the language of the provisions. See magistrate acknowledging other policies at Writ (App D pgs 43A -45A) See the district judge acknowledging the 2.7 or other policies in the 5B manual at Writ (App C pg 12A, 14A-17A). The 2.7 pre-discharge policy was introduced on pgs 1-3, 14, and as a attached exhibit of the June 5, 2005 record and again in the July 5, 2005 appeals record on pgs. 2, 4, 5, 6, 9 - 12, 19, 20, 23, 24, 26, 28-30.

Petitioner filed Judicial Misconduct against the Magistrate<sup>17</sup>. Thompson stating the mind and intent of the magistrate on pg 10-11 is conclusory. Certainly the record if the intent was a factual basis, would support the 6/14/04 time line to establish in second the briefs a position. Thompson's second summary [41-1] is void of his initial allegations.

The record before the court identified Thompson received a copy of the hearing tape to aid him in reducing the recited

facts presented in Court on 6/14/04<sup>18</sup>. Thompson responses from pgs 15 – 18 are plagiarized from the magistrate reports starting from pg 16 – 19<sup>18a</sup>.

17 The Writ on pgs 5 – 15 shows the magistrate biased treatment and allowing Thompson to commit specific violations. See also the Petitioner's **timely filed** objections on 8/04/04 to the magistrate report of 7/19/04 instead of Thompson date of error 7/17/04.

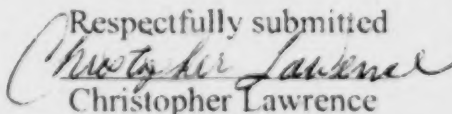
18 However, Thompson is professionally skilled in altering documents, statements of facts, and deposition statements to offset and diminish the contextual meanings. The Writ record before this Court on pages 14-15 shows Thompson received a copy of the hearing tape and blatantly without shame changes a Court record. See Writ App G 56A- 57A that shows Thompson thanking the Court's clerk for rushing him a copy of the hearing tape which means he specifically knew what the agreed facts were, but again lied to the previous Courts including this Court stating that the changes were inadvertences. Therefore this Court should not accept any further statements from Thompson who has now lied to the highest Court.

18a Thompson used verbatim what the magistrate biasing wrote in his report on 7/19/04. The Answer to the magistrate report in rebuttal is specifically located in the Petitioner's pleading dated 8/04/04, pgs 23 – 34, in the Petitioner pleading on 6/05/05, and finally on 7/05/05 entirely.

### **Conclusion**

Thompson has been untruthful on several issues and has changed, omitted, and altered Court evidence of facts, this Court should enforce what the law allows for these improper practices as the original Court. The Petitioner respectfully ask this Court to uphold stare decisis of the State of South Carolina contract Law which recognizes the exception of the at-will condition and the 5B manual and other manuals that altered the common law status of the state.

Respectfully submitted



Christopher Lawrence

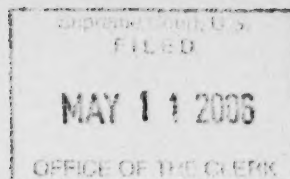
*Pro se of Record*

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No. 05-994



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In the  
**Supreme Court of the United States**

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**Christopher Lawrence - *Pro Se* Petitioner**

**V.**

**WESTINGHOUSE SAVANNAH RIVER  
COMPANY LLC - Respondent**

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**On Petition for Writ of Certiorari  
to the United States Court of Appeals  
for the Fourth Circuit**

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**PETITION FOR REHEARING**

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## **Introduction**

In each Court, Counsel for the Respondent has presented material which is untrue. The Magistrate, District Judge, and the 4<sup>th</sup> Circuit Appeals Court have protected the biased judicial authority, hindering proper justice for this case. The same Justices have produced an "up-to-the-minute exception" which allows them to interpret the language embodied in the WSRC 5B manual and DOE contract. This exception allows WSRC to ignore the contents of the 5B handbook, which includes a pre discharge provision. These biases violate previous stare decisis of South Carolina's "employment handbook exception to an *at-will* employee" and usurped interpretation of the DOE contract and Orders<sup>1</sup>

### **I. Petitioner's Procedural Due Process Rights under the U.S. Constitution were violated**

The following Justices; Roberts, Alito, Stevens, Scalia, Kennedy, Breyer, Thomas, Souter, and Ginsburg have not appropriately reviewed the case material presented to the Appeals and the District Courts. Often cases have been reconsidered that involve the departing from a question of law or the constitutionality to clarify the application of the law. In addition, this request should be honored so that more suitable consideration is given in support of the Pro se and material of facts. Attached documentation shows repleted errors<sup>2</sup>. It is a jurisdictional authority of this Court to properly review a case where the lower Court departs from the laws and statutes of S.C. pursuant to; Fed. R. Civ. P.26 F Discovery Plan, 56(c), and "employment exception rule" (Writ, pg.7 middle ¶, pg. 8 bottom ¶ to pg. 9). See supporting documentation (Petitioner's Writ Apx H, Pg.62A-63A)

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<sup>1</sup> "Power tends to corrupt, and absolute power corrupts absolutely. Great men are almost always bad men." ~Lord Action, in a letter to Bishop Mandell Creighton, 1887.

<sup>2</sup> Appendices, pleadings, medical transcript, sworn testimonies, Petitioner's deposition where the Respondent misstated facts, changed and manipulated deposition sentences, altered court documents, only then a fair decision based on the merit of these inferences would be determined.

Magistrate did not give any latitude toward the Pro se himself nor his representation and argument of his case, but proved to be an advocate.<sup>3</sup> The actual statement submitted to the Court with altered points is included in the rehearing request at Apx CC<sup>3a</sup>(pgs.1- 6). Petitioner complains of Statement being altered in the following pleadings to the lower Courts: (Apx EE dated 7/1/04 pgs.1and 2), (Apx FF pgs.2, 10, and 11), (Apx GG pgs. 4 – 13), and (see Apx HH, pgs. 1-5, 11- 18, and 30- 33). At the Respondent's request (see Apx DD pg 1), the Magistrate selected points from the initial Summary [40-1], contrary to what he originally stated he would base his decision from. (See Writ pgs 6 -11, and Apx I 87A-104A), (Apx F, pgs 53A- 55A). The Magistrate's report exhibited favoritism towards the Respondent, proctoring the case supporting bias. Therefore; violations were committed.<sup>3b</sup> There are genuine issues of dispute, regarding the at-will status of the Petitioner, unilateral contract, DOE contract, and pre-discharge policy 2.7 within the 5B manual and employee's handbook<sup>4</sup>

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3 Both Judges excused non compliance of rules within the Court in addition to violations made by Respondent counsel. The Pro se was held to a stricter requirement. See (Writ Apx H, pg. 61A). The Magistrate incorporated altered information into his report. See first (Ct. Writ Apx I, Pgs. 87A – 104A), also (Writ pgs. 9 – 15) and, (Apx CC, pgs.1- 6)

3a Petitioner's Writ of Certiorari used appendices with a single alphabet, to better distinguish between the Writ appendix and the Rehearing appendix, (i.e. double alphabet as; "Apx. CC" will be used).

3b Not following Federal Rule of Civil Procedure (56c) standards. The Petitioner did not receive procedural due process in violation of the 14<sup>th</sup> Amendment to the U.S. Constitution.

4 The Magistrate contradicted his own testimony on 06/14/04 which he recited in Court on one occasion "*The question becomes, are the policies, do they rise to the level of a contract? That's a legal issue but based upon a factual predicate.*" can this statement be supported in one court and contrarily stated as a legal issue by the Magistrate on and the District Judge in the report dated 7/19/04 and 3/31/05 that "There are no genuine issues of dispute?" See Ctr. Apx. I 99A – 1102A, Writ pgs 20-26, and (Writ Apx C Pgs10A-17A). The axiom of South Carolina law currently follows the employee exception rule where the at will status is

altered from the writings or language within a document. When the writings of an employee handbook exist the Court should defer to a jury to interpret the language from the facts of the handbook. The Courts have affirmed that; permanent employees working under an employment offer with invested benefits, or compensations, rises to a level of a unilateral contract: the Petitioner was given those benefits under the offer of employment upon hire and currently has a vested pension in place with WSRC; see Opinion[576] [14] Curtiss-Wright Corp. v. Schoonjongen, 514 U.S.73, 78, 115 S. Ct 1223, 131 l. Ed. 2d 94 (1995) See Feifer v. Prudential Ins. 306 F.3d 1202, 12 (2d Cir.(2002). The unilateral tangibles are construed against the employer who drafts the conditions of a work offer without input from the employee. Therefore a stalemate exists if the Supreme Court does not review this case.<sup>5</sup> If this case is not reviewed, the S.C. 4<sup>th</sup> Circuit Court is in violation of S.C. contract and employment law.

## **II. Preservation of justice and law vs. freedom to apply Supreme Court Rule10**

This is a sworn duty under the U.S. Constitution to uphold the law, protecting its citizens as well as the minority Pro se when Courts don't follow the laws. Affirming the lower Court's decision in this case the Respondent recognized that

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<sup>5</sup> Characteristics of this case drape on the lower court interpreting the languages of a handbook disregarding genuine legal facts of disputes. The essence of the Supreme Court Rule 10 requires a review and compliance. See (Writ Apx D, pgs 37A-45A). See fact finding and interpreting the law at (Writ Apx C, pgs 10A-17A). When Judge Harwell determined that the Petitioner was an at-will employee and afforded no rights of protection arising from the 5B handbook, DOE contract, DOE Order 350.1, 5Q, 8Q, 2.7, 2.9, and other policies within the 5B manual, the Judge crossed the thresholds of the Laws of South Carolina that were previously affirmed by the Appeals Court in Conner, Supra, at 610, Small I & Small II, Prescott, Baril Court supra, Miller at 127, Williams at 32, 26, and in Kump v. United Telephone Company of the Carolinas, 429 S.E. 2d 869 (S.C. App. 1993)

the 4<sup>th</sup> Circuit Appeals Court did not follow S. C. exception law to the at will status. See Respondent's Question (4) in response to the Petitioner's Writ dated 3/10/06

**III. It is a Fundamental Right under the U.S. Constitution to request a review when procedural due process is violated.**

Denial of this case should not conclude merely with the normal standard as articulated under the Supreme Court Rule 10 compelling reasons<sup>6</sup>. The Pro se Petitioner should be allowed a degree of liberalism to review the facts from Court transcripts, the Respondent's 5B employee handbook manual, and relevant documents to show the lower Courts biased their decision and there are inconsistencies to the record.

**IV. This case assembles on disputed facts and the relevance of a contract.**

As vocalized in the hearing on 6/14/04, the Petitioner contended that the Respondent's 5B manual and the DOE Contract formed the basis of a contract between WSRC and their employees. See Writ Apx I 99A – I 102A. The Respondent disputes that a contract exists between Westinghouse and Petitioner. Therefore, Respondent's regarding the standard for employment "handbook exception rule" and Fed. R. Civ. P. 56 (c) for Summary judgments must be vacated due to a genuine issue of disputed facts exist. The Court recognizes a Summary judgment is denied when there are disputed issues of a material fact against the core argument of a case. An adverse posture of this Court relative to this case will establish a negative precedence concerning genuine disputed facts. Consequently, this will

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<sup>6</sup> In this case, violations against the U.S. Constitution were abridged under procedural due process protecting the rights of the Pro se. Therefore as a citizen of the U.S., I have the absolute right under the law to request that this Court considers an unbiased review of the case, pursuant to the 11<sup>th</sup> and 14<sup>th</sup> Amendment and the 1964 Title VII Act U.S.C.A. § 1993 that guarantees these unalienable rights and protection against such judicial acts. Where biasing by the lower Courts as units of the U.S. Judicial system has no immunity against the Constitution or



render similar cases defenseless to any Summary motion; see Fed. R. Civ. P. 56(e). The 4<sup>th</sup> Circuit position should have followed the previous holding which the exception to the at-will status is a question for the jury. The facts presented by the lower Courts and Thompson were altered<sup>7</sup>. Thompson's reply brief on pg 4 note 7 isn't sincere. (Apx MM, pgs20-43) The record shows violations of the 5B manual policies.<sup>8</sup>

**IV. 4<sup>th</sup> Courts have not been open-minded toward contract claims present by minorities.**

**Core issue:** Attendance. Absences were approved<sup>9</sup> contrary to Thompson's account. See Pgs 1 -8 of Thompson's Response dated 3/10/05. Either the policies were followed or they were violated 2.12, 2.24, and 3-3. See Olson dep. concerning Leroy Myrick at Apx LL pgs 16-19 and LL pg 114). The Petitioner's absences on 8/24/01 - 8/29/01 were covered by a doctor's excuse. Clarification is shown with the attached (Apx EE pgs 3 and 14), listed conditions were satisfied, and (Apx BB, pg 10-13) specifically supports a-

private claims. (Board of Trustees of Univ. of Alabama v. Garrett (US Supreme Court, 2/21/0) 737. The lower Courts allowed violations against Federal Rules of Civil Procedure (Writ Pgs.3-16 and Apx H pgs 62A-63A), Apx D pg 29A ¶ 34)

7 (i. e., Counsel and the Court stated the Petitioner relied only on one provision in the 5B manual to establish his claims). In understanding the truth, not altered facts see (Apx MM pgs 133-139) which states "That what I know of direct" The statement does not preclude the usage of other policies as long as they are a part of the 5B manual. (Apx AA pgs 1-5)

8 (I.e. it was not possible to validate a violation of 5B policy without first addressing the policy requirement). Therefore, not mentioning 2.12, 3-3, 2.24, 2.19, and 2.25 does not restrict the application basis if a violation or breach has occurred from the 5B Manual. On 6/14/04 the Court established the basis for determining this case as a legal issue based on factual predicate. It can not be stated to the record as a genuine legal issue of dispute on (6/14/04, Writ Apx I pgs 99A - 102A) and not be the same legal issue on 7/19/04. The lower Courts cannot have it both ways.

9 The Petitioner received write ups for taking personal short vacations (S.V.) approved by management. See Petitioner's (Apx. II, deposition Pgs. 6- 9) Seaborn's sworn statement when asked " the different about

doctor excuse and approved time off. Respondent's recited to the Court on June 14, 2004, (Writ Apx I pg 95A), the absences warned against unexcused and needed a doctor note as well. This was specifically one of the points Thompson tried to omit from the Statement of Uncontested facts because it establishes the conditions were satisfied. Disputes against Seaborn's allegations are presented to the record in L1<sup>9</sup> notebook notes and deposition: Seaborn impeached his deposition by approving and excusing absences but wrote a consequence Seaborn fabricates a document after the Petitioner was terminated<sup>10</sup>. Seaborn was a member of the committee which determined the Petitioner's Probation<sup>11</sup> **Core issue: 2)** Thigpen's conduct presented in L2<sup>10</sup> notebooks notes show abuse. Thigpen had personal animus against the Petitioner<sup>12</sup>. Westinghouse Human Resources Adrian Smith documented Thigpen has a history of unprofessional behavior (Apx JJ pg 913). HR's Leroy Myrick specifically recommended Thigpen's removal from a Supervisory position for abuse of employees (Apx JJ exhibits (938, 939, and 942). Thigpen was disciplined for

the plaintiff requesting and granting personal vacation time off?" Seaborn responded "didn't have it, the lack thereof, was completely out by April 2000." Contrary, (Apx II 4) specifically documents requested time off was approved and granted, taken **6 short vacations** and been late 3 consecutive days. Respondent's (Policy 2.12, Writ Apx MC pgs 217A-218A) states when vacation is approved or used, it is not considered as absenteeism. Therefore contact was illegal once the approval was given. As pointed out in the Petitioner's Reply on pgs 3, 4, and 5, Respondent's policy 3-3, Writ Apx MF pg 268A specifically states make-up time is considered the regular schedule when made up. Seaborn told this Court at Apx II pgs 19 and 22 the time was made up. See (Apx II pgs 570-571).

**10** The note that Repondent's Counsel referred to in his reply concerning remaining civil was specifically testified to in Seaborn's sworn deposition at ApX II pg18-19 that he gave his management a document after the Petitioner had intent to sue. Remember on pg 2 of Seaborn's deposition he emphatically stated he did not keep privates notes or private dossier on the Petitioner. Contrary, on pg 10 the letter in question was never presented to the Petitioner and only publicized secretly when a suit was filed. Seaborn's entire deposition is deceitful, and the attached cursing and threatening



a radiological inspector and his supervisors. Thigpen cursed and yelled in the deposition hearing. (See Apx JJ, pgs 949 – 951) and (Thigpen's Dep Apx JJ pgs 14-22, 27-22). Both Thigpen and Respondent Counsel admit to Thigpen raising his voice trying to talk above the Petitioner on 8/27/01, the date leading to Thigpen inaccurate account of the phone conversation. See (Apx. JJ pg 42-45). See also the (Uncontested Fact ¶ 38 Apx CC pg4). Thigpen displayed the same behavior in the Oppenheimer case due to challenging his decision. (Apx LL pgs 3-13 of Olson was aware of Thigpen's abusive behavior)<sup>13</sup> The abuse is repeated by Thigpen when the Petitioner challenged his statement by the 5B manual 2.24 and 2.12 concerning reporting to management<sup>14</sup> Contrary, the 5B manual presented to DOE and the Respondent's employees does require Westinghouse to follow a specific process when an employee (Petitioner) has worked in conditions as a radiological workerII, having been exposed to acute doses of radiation levels daily collecting process samples from

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Petitioner's pleading at Apx GG, pgs 1-18 documents this violation of truth vs. documents to the record. Seaborn wrote informative write-ups building a system, then in his deposition he stated they were not used for disciplining (Seaborn Dep. Apx II, pg 22-30) Apx II 454 and 4). Contrary, Thigpen specifically admits on (Dep Apx. JJ pg 8), the informative write-ups were part of the disciplinary committee meeting. Consequently, Respondent violated 2.7 pre-discharge policies by including informative write ups as part of a disciplinary program to support a probation or termination. (See Writ Apx 170A) and (Apx II, 2e). Dave Olson forced Seaborn to remove an informative write up for not being appropriate (Apx. II, pg14. Seaborn states he agreed to removal of the write up but Olson called the write-up inappropriate Olson's dep. Apx LL pg 10-11).

**11** How fair it that the same accuser of allegations helps determines the level of discipline. Olson specifically stated to the contrary that the discipline board was made up from non bias board members with non management involvement. (Seaborn, Thigpen, Botnick, and Olson attended the review meeting and gave input for shaping the outcome of the inappropriate probation and termination, See (Olson's dep Apx LL pgs 16-28). See (LL Apx exhibits WSRC Lawr 454 , 676 and 678). See Thigpen's sworn statement of attendees at (Apx JJ, pg 8).

dissolved reactor fuel rods. The 5B manual policies do not allowed the Respondent to have a guide for operating but treat it as illusion when it does not benefit a need. **Core issue: 3)** Probation disputes to the record in Dr. Botnick's L3<sup>11</sup> notebook notes, dated 7/05/05 show Petitioner was skipped to a higher degree of discipline against the pre-discharge policy 2.7. See Apx JJ pg 676 listing a corrective step process. The Pre-discharge 2.7 policy at Writ Apx 172A – 180A documents a step process. Respondent can not announce and apply a pre discharge and termination policy reserving the right to follow it at will<sup>15</sup>. The Respondent's doctor report specifically documented no evidence was given

12 Thigpen had constant conflict with Respondent's management and employees. See (Apx. JJ pgs. 940 and 941). Earl Brass, a level manager. deposition statement, notes Thigpen's behavior should be punished at a higher level other than a corrective action was written up by Mr. Brass for violating Respondent's Rules of conduct (Brass Dep. Apx JJ exhibit 69 - 76). Thigpen participated in a disciplinary board meeting in violation when it was determined that the Petitioner's probation and termination was in process. Thigpen was questioned in detail then admitted in his deposition (Apx JJ pg3-4 he was reprimanded, charged with discriminating acts, practices of harassment).

13 Thigpen admits his flashpoint is probably a little higher (see Apx JJ pg 18). Thigpen was demoted around 10/04 after an additional write up and under investigation for harassing another black employee, Larry Davis. See statements from Respondent's managers (SOM) and employee at (Apx JJ pgs 938, 939, and 942) Thigpen's violations of Respondent's Rules of Conduct consist of having sexual intercourse with another employee on WSRC property, cursing both management and employees, threatening employees, falsifying a lock out for Hazardous energy, and becoming aggressive toward a female co-workers threatening, and intimidation (Thigpen's Dep. Apx JJ pgs 2 and 3).

14 Thigpen became livid and starting yelling over the phone which caused the Petitioner to yell back and ask him "was he a dumb ass and state his problems were that he did not listen" See (Dep at Apx MM. pgs). Thigpen wrote his version of the incident (Apx JJ, pg 666) to Dave Olson who already had personal animus against the Petitioner. Contrary the Petitioner did notify WSRC management (Apx JJ pg 658) and Writ Apx MD pg 223A and Apx MC pg199A that Apx JJ pg 658 show Chuck Orman and David Nason (supervision and management was notified) Human Resources based their decision only from Thigpen's account. There was nothing in the conversation with Dave Olson on the 31<sup>st</sup> of upon the

Petitioner being absent during medical disability leave<sup>16</sup> The Law regarding FMLA § 825.302 require 30 days notice. See medical entry made on 5/22/00 at Apx BB for Petitioner's compliance. See Disability Certificate Apx BB 14. However, Botnick forced the Petitioner back to work and stopped disability payment benefits from 9/11/00. See Apx BB entry made on 9/12/00. **Core Issue: Termination.** 4) Dave Olson did not follow the FMLA 2.24 disability policy and violated Federal Law pursuant to section 107, §825.114 and §825.116. See Apx LL pgs 18-23 with supporting Apx LL 353, 355-366) see also Petitioner's (Dep Apx MM pgs 16-43 that discusses son medical). Respondent terminated the Petitioner on his scheduled day off 8/30/01 and when Petitioner's son was admitted into hospital (Apx LL pgs 660 and 358A <sup>17</sup> (Apx LL pg 358A note on 8/24/01-8/25/01 and the Petitioner following the terms of the inappropriate probation to have a doctor excuse and for emergency); see (Apx BB pgs 10 -13). Remember the uncontested fact counsel told the Court at ¶ 8 on Writ Apx I 95A that "unexcused absences would result in discipline".

August that gave the Petitioner any idea that the termination process had been put into place on 8/29/01. See Olson's phone at Apx JJ pg 1001 and Olson's memory lapsed concerning conversing on 8/31/01 at Apx LL pg 12, line 14) The Petitioner wasn't given a proper medical exam which was required for the exposure to hazardous materials. In addition Human Resources had not properly given the Petitioner an exit review which is an extreme violation of nuclear facility 2.9 policies. The Magistrate stated the Petitioner did not request such check or exams. Contrarily, the 5B 2.9 and DOE Directive Contract # DE-AC09-96SR18500, pgs C7-C8, Writ Apx K pgs 138a- 142a requires a standard and for the Respondent to follow Environmental Safety and Health (ES&H) program established within the 5B Handbook. See Apx MB 189A- 195A

15 Respondent was required to move from informative to corrective actions as provided in the pre-discharge 2.7 provision Apx MA.pgs 166A-173A.

16 See the untrue document from Dr. Botnick Apx KK pg105); see (Botnick dep. contrary to his note at Apx kk pgs 3-20); See Olson's statement at Apx LL pgs 14 and 16). See Dr. Botnick contrary

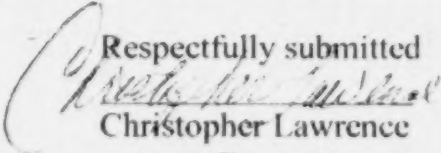
statements concerning not ever speaking to the Petitioner's physician at (Botnick dep Apx KK pgs 24-31), see (Bonick's animus document in the Petitioner's medical transcript to the contrary at Apx BB pgs 1- 4) 4d). Dr. Botnick mentioned he was tracking and targeting the Petitioner (Apx KK pgs 522 and 547). Botnick wrote negative comments in the Petitioner's employment and medical files concerning the Petitioner's medical procedure, attendance, and business. See (Apx BB, pgs 1-10, dep pgs 19- 29). Dr. Botnick violates the 5B manual 2.24, the Family medical Leave Act concerning disability and admitted he makes occasional errors. (Botnick Dep.KK pgs. 22-32). Botnick never at any time reviewed the Petitioner's medical transcript before making a medical decision on a surgery he did not perform. (Botnick Dep. KK pg 29-30) Botnick sworn testimony statement admitted he did not know about the FMLA (Botnick Dep.KK pgs 25-53)

17 Respondent agree for the Petitioner to take personal time off due to son's medical flair-ups. Petitioner provide the doctor excuse and the Respondent's own medical approved the excuse. Respondent still terminated the Petitioner's employment meditated from personal animus and dislike. Olson wrote an untruthful document concerning May 30, 2000 absences and June 5, 2000 to his upper management stating the Petitioner absences on 5/30/00 and 6/5/00 was unexcused. See (Apx LL pg114) see the absences were approved and excused at (Apx LL pgs 102, 103, and 331). Remember the 5B manual contract agreement follows if approval is given for any absences, it can not be considered as absenteeism.

### **Conclusion**

These specific points were stated in the record to the lower Court related to South Carolina Law concerning disputed issues. The handbook exception to the at will-status, the Respondent's 5B manual and the DOE contract created a unilateral contract. This Court should articulate if the current S. C. State law allows a judge to interpret a contract or writings to an at-will condition previously affirmed that the interpretation is for a jury.

Respectfully submitted

  
Christopher Lawrence

*Pro se*

2740 Highpoint Road  
Snellville, Ga. 30078  
(678) 344 - 4518

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\* Denotes Large Folded Page

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IN THE SUPERIOR COURT OF AIKEN COUNTY  
STATE OF SOUTH CAROLINA

CHRISTOPHER LAWRENCE

Cause File No. 2003-CP-02-45

**Plaintiff**

**VS.**

WESTINGHOUSE SAVANNAH  
RIVER COMPANY

**Defendant**

Attn. Melanie Overstreet  
Building 703-A  
Aiken, South Carolina 29808  
For the Defendant

**SUMMONS**

**TO THE ABOVE NAMED DEFENDANT:**

You are hereby summoned and required to file with the clerk of said clerk of said court and serve upon the Plaintiff's who pro se is and whose name address is:

Christopher Lawrence  
1530 Sutter Drive  
Hanover Park, Illinois 60133

An answer to the complaint which is herewith served upon you, within 30days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment

by default will be taken against you for the relief demanded in the complaint.

This 14 day of January, 2003

**Clerk of Superior / State Court**

January 14, 2003

By S/A Shannon Jones D/C  
**Deputy Clerk**

**IN THE CIRCUIT COURT OF THE AIKEN JUDICIAL  
CIRCUIT  
COUNT DEPARTMENT, SOUTH CAROLINA**

CHRISTOPHER LAWRENCE,

Plaintiff,

Cause File No.

2003 CP-02-45

WESTINGHOUSE SAVANNAH  
RIVER COMPANY,

Defendant

**COMPLAINT AT LAW**

**NOW COMES** the Plaintiff **CHRISTOPHER  
LAWRENCE**, pro se, and as and for his Complaint against  
**Westinghouse Savannah River Company**, states as follows:

### **Count 1 – Wrongful Termination**

1. The plaintiff Christopher Lawrence, hereinafter referred to as “Lawrence” currently resides in Hanover Park, Illinois and Atlanta, Georgia.
2. The Defendant Westinghouse Savannah River Company, hereinafter referred to as “Westinghouse”, at all relevant times operated a nuclear facility in Aiken, South Carolina.
3. Westinghouse employed Lawrence from November 6, 1987 through August 31, 2001.
4. At the Time of his termination, Westinghouse employed Lawrence as a Production Operator, grade - 18, working in the Nuclear Materials Management Division.
5. Lawrence has been assigned to the Nuclear Materials Division since March of 2000, working at Westinghouse’s Savannah River site.
6. At all relevant times hereunder Westinghouse was the employer and Lawrence was the employee, establishing and maintaining an employer and employee relationship.
7. At all relevant times Westinghouse created and established certain policies, practices and procedures, which defined the terms and conditions under which it expected all of its employees to conduct themselves.
8. These policies, practices and procedures were set out in a written document identified as Procedure 5B Human Resources Policies, Practices and Procedures, hereinafter referred to as “Procedure Manual.”

9. The Procedural Manual, among other things, set forth specific methods for handling such situations as; Disability, occupational and non-occupational, and Termination, voluntary and involuntary.
10. Employees, such as Lawrence, reasonably are and were entitled to rely on the Procedural Manual in conducting themselves as Employees of Westinghouse.
11. Therefore, Westinghouse is and was obligated to follow the policies, practices and procedures set forth in the Procedural Manual.
12. On or about August 31, 2001, Westinghouse terminated Lawrence as an employee.
13. In terminating Lawrence, Westinghouse breached, violated and/or failed to follow certain policies, practices and procedures as set forth in the Procedural 5B manual.
14. Westinghouse breached the policies, practices and procedures of the Procedural manual, when it terminated Lawrence, as follows:
  - A. Failed to properly place Lawrence on probation, effective September 29, 2000;
  - B. Failed to properly follow and enforce the policies, practices and procedures regarding disability and time off work for medical purposes;
  - C. Failed to properly follow and enforce the policies, practices and procedures regarding involuntary or for cause termination;

D. Failed to properly terminate Lawrence; and

E. Failed to follow the policies, practices and procedures for time worked.

15. The above described failures by Westinghouse constituted independent breaches of the Procedural manual and employer and employee relationship relevant to a specific time frame.

16. The Westinghouse's acts and/or omissions, the breaches, were willful, wanton and intentional.

17. As a result of these breaches, Westinghouse wrongfully terminated Lawrence.

18. As a result of these breaches, Lawrence suffered damages in excess of \$70,000.00.

WHEREFORE, the Plaintiff Christopher Lawrence respectfully requests this Court grant him the following relief:

A. Special and actual damages in excess of \$70,000.00;

B. Punitive damages in amount in excess of \$70,000.00; and

C. Costs associated with the suit, including reasonable attorney fees and such other relief as the Court deems just and proper under the circumstances.

## **Count 2 – Retaliatory Discharge**

1-16 The Plaintiff re-alleges and re-affirms the allegations contained in Paragraphs 1

through 16 of Court 1 of the Complaint at Law as Counts 1-16 of Count 2 of the Complaint at Law, as though fully set forth herein.

17. Lawrence is a well-educated, outspoken African-American.

18. Lawrence often spoke-out on issues, which affected all the employees at Savannah River Site where he worked.

19. Lawrence from time to time advised other employees at the Savannah River Site of their rights and obligations under the Procedural Manual.

20. Lawrence, at the time he worked for Westinghouse at the Savannah River Site, owned and operated his own business.

21. From time to time his business was advertised through the use of public media outlets, such as newspaper, televisions, and radio stations.

22. These advertisements could and were heard by both, the employees and managers at Westinghouse.

23. The fact that Lawrence was out-spoken as herein described caused certain managers at Westinghouse to want to terminate him.



24. The fact that Lawrence owned and operated a business caused certain managers at Westinghouse to be jealous and want to terminate him.
25. Westinghouse through the actions of its employees retaliated against Lawrence by terminating him as an employee.
26. The right to speak out, freedom of speech, is a protected right and public policy protects individuals, such as Lawrence, from being terminated for exercising this right.
27. The right to own your own business is a protected right and public policy protects individuals, such as Lawrence, from being terminated for exercising this right.
28. Westinghouse through the acts and omissions of its employees committed the tort of retaliatory discharge when it terminated Lawrence.
29. As a result of these breaches, Lawrence suffered damages in excess of \$70,000.00.

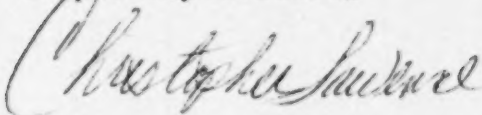
WHEREFORE, the Plaintiff Christopher Lawrence respectfully requests this

Court grant him the following relief:

- A. Special and actual damages in excess of \$70,000.00
- B. Punitive damages in the amount in excess of \$70,000.00; and

- C. Costs associated with the suit, including reasonable attorney fees, and such other relief as the Court deems just and proper under the circumstance;
- D. Special interest as deemed by the Court for the delay of process.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Christopher Lawrence".

Christopher Lawrence

Notarized By:

Date:

**APPENDIX BB**  
**MEDICAL RECORDS**  
**SEE PULLOUTS**

**BB**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
AIKEN DIVISION**

**CHRISTOPHER LAWRENCE,**

**Plaintiff,**

**Vs.**

**WESTINGHOUSE SAVANNAH RIVER  
COMPANY LLC**

**Defendant.**

**Case No. 1:03-484-23BG**

**STATEMENT OF UNCONTESTED FACTS**

Pursuant to the court's order dated June 14, 2004, the parties agreed that the following facts were uncontested. These facts were entered on the record in court on June 14, 2004.

1. Lawrence was first employed by WSRC in 1989.
2. In 1989, Lawrence was given two years service credit for his prior employment with Morrison-Knudsen.
3. WSRC assumed the interest of Dupont Corporation when WSRC took over management of the Savannah River Site (SRS) in 1989.
4. WSRC operates the SRS under a contract with the Department of Energy (DOE).
5. The DOE contract requires WSRC to establish local policies including personnel policies.
6. WSRC has a personnel policy manual called the 5B manual.
7. WSRC uses a system of "contact" to document some interactions between supervisors and subordinates. These can include disciplinary contacts and can also be used to document something positive the employee did or it could be used to caution employee about a management concern.

8. Other types of disciplinary actions used by WSRC include: suspension, probation, final employee commitment, and termination.
9. In 1988, Lawrence had an employment absence related to a buionectomy.
10. He informed his supervisor he would be out of work for eight weeks.
11. The WSRC medical department felt that eight weeks was excessive and advised Lawrence to bring in a doctor's note.
12. The note Lawrence brought in contained restrictions but did not address the issue of return to work.
13. Lawrence also asserted he should not be expected to come to work because he could not drive a manual transmission car.
14. In February 2000, Lawrence's department suffered a reduction in force. Because of his seniority, Lawrence was allowed to transfer to another division.
15. On July 28, 2000 Lawrence was absent from work to get blood work in preparation for a second bunionectomy.
16. When he did return to work Lawrence was excused to home because he said he was being affected by medication.
17. WSRC management and Dr. Botnick (WSRC doctor) documented that they were concerned that Lawrence's outside business was interfering with his WSRC employment. Dr. Botnick made comments about this in Lawrence's employment and medical files.
18. Dr. Botnick's position regarding Lawrence's attendance was skeptical.
19. After Lawrence went out on medical leave related to his second operation, Dr. Botnick began calling Lawrence the week following his surgery to obtain information about Lawrence's leave.

20. Dr. Botnick felt that three weeks leave for the operation should have been more than sufficient for Lawrence to recover.
21. Dr. Botnick located Lawrence's personal physician and found out that Lawrence was going to be evaluated on September 7, 2000.
22. On September 11, Lawrence's supervisor Ralph Thigpen made calls to Lawrence at his home, at his mothers' homes, and his ex-wife's home to obtain information about his leave.
23. When the supervisor reached Lawrence, Lawrence said that the supervisor was not a doctor and could not instruct him to return to work without talking to his doctor.
24. Sometime after September 11, WSRC received a note from Lawrence's doctor that listed working restriction but did not address whether or not he could return to work.
25. Dr. Botnick reached Lawrence on September 12. Lawrence said he was not released by the physician.
26. The September 11 doctor's note given to WQSRC contained only work restriction.
27. Lawrence told his supervisor that he had a medical excuse until October 3.
28. WSRC management wanted the WSRC human resources department to intervene at this point because they said they had pushed the issue as far as they could without guidance.
29. Lawrence did not return to work until September 22, 2000.
30. The day he returned to work, his supervisor found him asleep. Lawrence stated he was asleep due to medication.
31. On September 29, Lawrence was placed on probation.
32. Dr. Botnick did not review, at any time, Lawrence's personal physician's medical file however did call Lawrence's personal physician on several occasions.



33. Lawrence never gave Dr. Botnick his personal medical records.
34. On August 27, 2001, Lawrence called his supervisor to report he would be late due to his son's illness.
35. On August 27, 2001 Lawrence called the WSRC control room to inform WSRC he would be out for two or three additional days due to a sinus infection.
36. Lawrence's supervisor reported to higher management that Lawrence had disobeyed instructions about whom to contact to report absences.
37. Thigpen tried to call Lawrence. Lawrence called his supervisor back. They had an angry conversation during which Lawrence asked his supervisor "Are you a dumbass?"
38. Lawrence's supervisor also raised his voice during the conversation.
39. WSRC decided to terminate Lawrence's employment.
40. On September 1, 2001 Lawrence was escorted off the site by security personnel.
41. Lawrence's termination form is dated August 30, 2001.
42. Lawrence filed a charge of discrimination on July 19, 2002.
43. The EEOC issued a notice of right to sue on September 13, 2002.
44. This lawsuit was filed and served on January 14, 2003.
45. WSRC has a contractual obligation with DOE to follow the DOE contract.
46. WSRC has an internal policy labeled policy 2.9 that contains an exit interview procedure that Lawrence did not receive.
47. WSRC policy 2.9 contains a checkout procedure that Lawrence did not receive.
48. WSRC has a document that employees have been required to sign from time to time that lists conduct that an employee can be disciplined for.
49. There is a DOE Order 350.1 that is referred to in the WSRC/DOE contract.

Respectfully submitted,  
MALONE & THOMPSON LLC

S/A Charles F. Thompson Jr.  
Charles F. Thompson, Jr. (ID #5969)  
Attorney for Defendant  
Westinghouse Savannah River Company

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(803) 254-3300

Dated this 17<sup>th</sup> day of June 2004

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
AIKEN DIVISION**

**CHRISTOPHER LAWRENCE,  
Plaintiff,  
Vs.  
WESTINGHOUSE SAVANNAH RIVER**

**COMPANY LLC**  
**Defendant.**

**Case No. 1:03-484-23BG**

**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the foregoing statement of uncontested facts has been served upon Plaintiff by overnight deliver via courier and addressed to:

Christopher Lawrence  
2740 Highpoint Road  
Snellville, GA 30078

S/A Charles F. Thompson Jr  
Charles F. Thompson, Jr.

Dated this June 17, 2004

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
AIKEN DIVISION**

**CHRISTOPHER LAWRENCE,**

**Plaintiff,**

**Vs.**

**WESTINGHOUSE SAVANNAH RIVER**

**COMPANY LLC**

**Defendant.**

**Case No. 1:03-484-26BG**

**DEFENDANT'S SECOND MEMORANDUM IN  
SUPPORT OF ITS MOTION FOR SUMMARY  
JUDGEMENT**

**I. INTRODUCTION**

Pursuant to the court's briefing order of June 14, 2004, WSRC submits this second brief regarding its motions for summary judgment. It is the WSRC's understanding that the briefing order requires a succinct memorandum addressing only the legal and factual issues necessary to summary judgment. Therefore, this memorandum omits background factual matters stated in WSRC's first memorandum in support of motion for summary judgment. This memorandum also omits the statement of standard for summary judgment. WSRC requests that the court incorporate the original memorandum to the extent necessary to refer to the background of this matter or the standard for review.

**II. ARGUMENT**

**A. Just Because an Employee Handbook Exists Does Not  
Mean There is an Employment Contract**

## 1. Introduction

**Awareness and Reliance:** The handbook exception to the at-will employment rule is based on the theory of unilateral contract. *Small v. Springs Industries*, 357 S.E.2d 452 (S.C. 1987). A unilateral contract offer requires that the promissory language in a handbook be manifestly and intentionally communicated to the employee. Only then can an employee accept the offer, and provide consideration, by relying on it and containing to work. *Small*, 357 S.E.2<sup>nd</sup> at 454. (“Small action in forbearance in reliance on Spring’s promise was sufficient consideration to make the promise legally binding.”) (emphasis added); *Taylor v. Cummins Atlantic*, 852 F.Supp. 1279 (D.S.C. 1994), *aff’d*, 48 F.3d 1217 (4<sup>th</sup> Cir.), *cert. denied*, 116 S. Ct. 176 (1995)) (the employee **must be aware** of the alleged promise and rely on it. ) Therefore, a handbook promise that exists, but the plaintiff doesn’t know it exists, does not alter the at-will relationship.

**The Handbook Must Restrict the Right to Discharge:** To create a contract, a handbook must also make a promise that the employee is entitled to something related to discharge. This is explained, for example, in the case of *Bookman v. Shakespeare*. Shakespeare’s written policy promised employees it would investigate all complaints of harassment carefully. Bookman got into a fight with a co-worker because the co-worker was sexually harassing her. 442 S.E.2d 183 (S.C. App. 1994). She claimed Shakespeare violated its written promise to investigate all sexual harassment complaints “promptly and carefully.” If they had made a careful investigation, she alleged, the fight would not have occurred. Although the court found that Shakespeare may have breached its promise to investigate carefully, the court held that a promise to investigate “carefully” does not restrict the employer’s right to discharge. Shakespeare was free to terminate Bookman because the “careful investigation”

promise was not a promise that limited Shakespeare's right to terminate at-will.

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1 There are many cases from other state that specifically hold an employee must have been aware of the promissory language in the handbook. *Decker v. City Wyandotte*, 2002 WL 31956958 (Mich. App. 2002); *Eerdmans v. Maki*, 573 N.W.2d 329 (Mich. 1997); *Birmingham Parking Authority v. Wiggins*, 797 So.2d 446 (Ala.2001); *Frick v. Univ. Hosp.of Cleveland*, 727 N.E. 2d 600 (Ohio 1999); *Irvin v. Community Bank*, 717 So.2d 369 (Ala. 1997); *Williams v. Precision Coil, Inc.*, 459 S.E.2d (W.Va. 1995); *Rahrs v. Nebraska Public Power Dist.*, 1995 WL 91557 (Neb. App. 1995); *Crisco v. Board of Educ. Of Indian River School Dist.*, 1988 WL 90821 (Del. 1988); *Duldulao v. Saint Mary of Nazareth Hosp. Center*, 505 N.E.2d 314 (Ill. 1987). I could not find any case law contrary to the above cases. Although a South Carolina court has not specifically held awareness is required, separate South Carolina courts have held the employee must continue employment in reliance of the handbook language and, in other contexts, that one cannot rely on something one is unaware of. *Towles v. United Health Care*, 524 S.E.2d 839 (S.C. App. 1999) (must be reliance); and *Williams v. Texas Co.*, 24 S.E.2d 873, 878 (S.C. 1943) (must have knowledge of the facts for there to be reliance).

The South Carolina Court of Appeals reached the same legal conclusion in *Prescott v. Farmers Telephone Co-op., Inc.* (S.C. App. 1997) (rev'd on other grounds 516 S.E.2d 923 (S.C. 1999)). In *Prescott*, the company handbook listed types of conduct that could result in discipline. The Farmers Telephone handbook also promised that employees could have the termination decision reviewed by higher levels of management. Critically, the court held, *Prescott* did not point the court to any language in the handbook promising pre-termination warnings or other procedures. Therefore, the court noted, the case was unlike previous South Carolina handbook



cases that dealt with promises of pre-termination procedures. A promise concerning review after the decision was made, the court held, did not limit the right to discharge. The court also held that the listing of conduct that could result in discipline, without promising a certain procedure before discipline, did not limit the right to discharge. *See, also Epps v. Clarendon County*, 405 S.E.2d 386 (S.C. 1991) ( a handbook that did not address pre-termination procedures did not create a contract).

In every handbook case in which the South Carolina Supreme Court has found a jury question, language in the handbook restricted the pre-discharge procedure. For example, in *Smalls v. Springs*, the handbook stated there would be four warning before discharge and only one was given. 357 S.E. 2d 452 (S.C. 1987). In *Jones v. General Electric*, the disciplinary policy stated that offenses "with *repetition* will lead to disciplinary time off and/or discharge." 503 S.E.2d 173, 183 (S.C. App. 1998). Most recently, in *Connor v. City of Forrest Acres*, the handbook stated "employees shall be treat fairly and consistently," and "discipline shall be of an increasingly progressive nature." 560 S.E.2d 606, 611 (S.C. 2002). The South Carolina Court has never held that the mere recitation of types of discipline, or that promissory language in a handbook that does not relate to the discharge procedure, is enough to create a jury question on an alleged promise to follow certain procedures before discharge.

### **3. Lawrence's Breach of Contract Allegations**

Because his Complaint was vague, counsel for WSRC carefully examined Lawrence in his deposition about what policies he thought were violated. In his deposition, Lawrence stated that WSRC policies were violated because he was denied due process under WSRC policy 2.9, because he was denied an exit interview, and because his discharge was not approved by the WSRC president. (Tab 1, Lawrence pp. 132-

139). Lawrence testified that he did not know of any other policies that were violated. (Tab 1 Lawrence p.139).

In response to WSRC's motion for summary judgment, Lawrence has mentioned other policies, however, has never explained how they were violated. In particular, he has pointed out that WSRC has a rules of conduct (the same as in the *Prescott* case) that lists conduct that can result in discipline.

**WSRC Policy 2.9:** WSRC Policy 2.9, like the policies discussed in *Prescott*, deals only with the post-termination process. It does not promise any form of process before discharge. (Tab 2). The policy only discussed the administrative process of termination after the termination decision has been made. It contains no substantive promises that limit WSRC's right to discharge. Although Lawrence has vaguely asserted that 2.9 provides him due process, the policy contains no mention of due process or, in fact, of any pre-discharge process. The policy is analytically the same as the policy in *Prescott*.

Both policies deal only with the process of dealing with a terminated employee. Neither promises a pre-termination procedure and therefore neither alters the employee's at-will status.

Lawrence has raised the question of whether or not the WSRC president approved Lawrence's termination. Presidential approval is mentioned in Policy 2.9. Policy 2.9 states that the "[p]resident or designee" approves discharges. Like the approval/review process in *Prescott*, this review is not a pre-decision limitation on the right to discharge. Furthermore, it is uncontested that the president's designee approved Lawrence's discharge. 3.9 clearly states that the president can designate his authority to approve discharges. As the attached affidavit shows, the WSRC president's delegate approved Lawrence's discharge. (Tab 3).

Lawrence also asserts that he was not given the exit interview promised in policy 2.9. Like everything else in policy 2.9m the "exit interview" is a post termination procedure. The interview's purpose is not even to review the grounds for discharge but is, instead, to "deal with the employment relationships of the terminating employee." Therefore, this provision did not alter Lawrence's at-will status.

**Other policies:** Since WSRC's motion for summary judgment was filed, Lawrence has mentioned other policies. However, he has never explained how those policies restricted WSRC's right to discharge. In any event, in his deposition, Lawrence specified that his breach of contract claim was based on 2.9. (Tab 1, Lawrence pp. 132-139). He specifically testified that there were no other policies he was relying on. (*Id.*) Lawrence cannot create a material issue of fact in opposition to summary judgment by submitting factual assertions that contradict his prior sworn deposition testimony. (*See e.g. Hernandez v. Trawler Miss Vertie Mae, Inc.*, 187 F.3d 432 (4<sup>th</sup>, 438 (Cir. 1999); *Rohrbowh v. Wyeth Laboratories*, 916 F.2d 970, 975 (4<sup>th</sup> Cir. 1990); *Barwick v. Celotex Corp.*, 736 F.2d 976, 960 (4<sup>th</sup> Cir. 1984). As the Fourth Circuit stated in *Barwick*, the utility of summary judgment would be greatly diminished "[i]f a party who has been examined at length in deposition could raise an issue of fact simply by submitting an affidavit contradicting his own prior testimony." 736 F.2d at 960. "[A] genuine issue of material fact is not created where the only issue of fact is to determine which of the two conflicting versions of the plaintiff's testimony is correct." *Id.*

In any event, none of the other policies mentioned by Lawrence alter his at-will status. Most notably, Lawrence points to the "rules of conduct." The WSRC rules of conduct list only the types of conduct that can result in discipline. The rules do not promise any pre-termination procedure.

Therefore, they are exactly like the rules of conduct in *Prescott* and do not limit the right of discharge.

Although he did not testify that it formed a part of his contract claim, Lawrence also complained that he could not be required to report to certain managers about his absences because the attendance policy only mentions management in general. (Tab 1, Lawrence p. 12-13, 20, 100, 111, 129). As above, however, an instruction to report to a specific person is not a restriction on the right to discharge, i.e., WSRC did not promise Lawrence he would not be discharged if he reported to any manager. In any event, the absence of a written statement authorizing WSRC to instruct employees does not contractually preclude WSRC from doing so. An opposite conclusion would empower employees to refuse any instruction not specifically authorized in writing. For example, no policy says do not punch your supervisor in the nose. It is nonsensical to argue that Lawrence was permitted to do so.

Lawrence also complains that he could not be required to return to work if he had a medical problem. However, no WSRC policy promises this. His medical problems had restrictions, not work exclusions. In any event, his termination was ultimately caused by repeated refusal to act as instructed.

## **B. Lawrence is Procedurally Barred from Asserting a Racial Discrimination Claim**

Under Title VII of the Civil Rights Act of 1964, a prerequisite to filing a lawsuit claiming racial discrimination is to file a charge of discrimination with the EEOC or the state agency equivalent. This charge must be filed within 300 days of the alleged discriminatory act. 42 U.S.C. § 2000e-5(e)(1). Following the EEOC's conclusion of its investigation, a lawsuit must be filed within 90 days of the receipt of an EEOC right to sue letter. 42 U.S.C. § 2000e-5(f)(1). Lawrence filed his charge of discrimination on July 19, 2002. This was 350

after his termination. His charge was therefore untimely. The EEOC issued a notice of right to sue on September 13, 2002. Lawrence testified that he did receive the notice in September. (Tab 1, Lawrence p. 147). This lawsuit was filed January 14, 2003. This is 112 days after issuance of the notice of right to sue and, even if Lawrence received the notice on the last day of September, he was well beyond the 90 day limitations period. For these reasons, Lawrence's claim of racial discrimination is untimely.

### **C. In Any Event, Lawrence Cannot Meet the Standards of Proof for a Racial Discrimination Claim.**

In any event, to establish claim of discrimination, Lawrence must initially show direct evidence that race was a reason for his discharge or he must present a prima facie case of discrimination. See, e.g., *Evans v. Technologies Applications & Service Co.*, 80 F.3d 954, 959(4<sup>th</sup> Cir. 1996) ("To meet her burden on summary judgment, Evans might have offered direct or circumstantial evidence, or proceeded under the proof scheme set forth in *McDonnell Douglas Corp. v. Green*.").

There is no direct evidence of discrimination. To establish a prima facie case of racial discrimination (among other things) Lawrence must show either that he was replaced by someone outside the protected class or that he was treated differently from similarly situated white employees. See, e.g., *Cook v. CSX Transportation Corp.*, 988 F.2d 507 (4<sup>th</sup> Cir. 1993) (citing *Moore v. City of Charlotte*, 754 F.2d 1100 (4<sup>th</sup> Cir. cert. denied 472 U.S. 1021 (1985))). Lawrence has no evidence concerning who replaced him nor does he have any evidence a similarly situated individual was treated differently from him. That is because no employee was similarly situated. Satisfying this method of proving discrimination requires Lawrence to compare himself to an individual who committed the same offenses and who had a similar history. See, e.g., *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 583 (6<sup>th</sup> Cir. 1992) (to be



similarly situated, individuals must have same supervisors and must have engaged in the same conduct without differentiating or mitigating circumstances) (cited in *Edwards v. Newport News Shipbuilding*, 166 F.3d 1208 (4<sup>th</sup> Cir. 1998) (unpublished)); *Roberts v. General Electric*, 1 F.3d 1234 (4<sup>th</sup> Cir. 1993) (comparator was not terminated for the same offense); *Cook v. CSX Transportation Corp.*, 988 F.2d 507 (4<sup>th</sup> Cir. 1993) (must be a comparator who committed “conduct of comparable seriousness.”). Therefore, Lawrence’s discrimination claim fails because there is no evidence of different treatment of an employee in very similar circumstances.

#### **D. Lawrence Has Admitted He Has Failed to Mitigate His Damages**

A terminated employee has a duty to mitigate his damages by seeking other employment to replace his lost wages. *Miller v. AT&T Corp.*, 250 F.3d 820, 838 (4<sup>th</sup> Cir.2001); *Corbin on Contracts*, §1095. In blatant cases, a failure to mitigate warrants a dismissal of the entire matter. This is such a case. In his deposition, Lawrence admitted that he did not want to increase his income because he would then have to pay more child support. (Tab 1 Lawrence 159). He also testified that he disposed of his interest in this clothing store because the judge in his divorce case thought he was hiding business records to shield his income. (Tab 1 Lawrence p. 157-158). He admitted he was not seeking jobs that would take him beyond “a minimal amount of money.” (Tab 1 Lawrence p. 159). Lawrence therefore has deliberately and completely avoided his duty to mitigate. If, as here, a plaintiff completely fails to mitigate, he is totally barred from recovery and the defendant is entitled to complete summary judgment (not just exclusion of some damages). *Bosalina v. Lever Brothers Inc.*, 849 F.2d 604 (4<sup>th</sup> Cir. 1988) (unpublished) (citing *Brady v. Thurston Motor Lines.*, 753 F.2d 1269, 1278 (4<sup>th</sup> Cir. 1985)).



## **CONCLUSION**

For the reasons set forth above, WSRC therefore respectfully requests that the court grant its motion for summary judgment as to all of Lawrence's claims.

Attorneys for the Defendant,

S/A Charles F. Thompson Jr.

Charles F. Thompson, Jr.

Michael D. Malone

Malone & Thompson, LLC

1527 Blanding Street

Columbia, S.C. 29201

903-254-3300

This the 24<sup>th</sup> day of June 2004

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
AIKEN DIVISION**

**CHRISTOPHER LAWRENCE,**

**Plaintiff,**

**Vs.**

**WESTINGHOUSE SAVANNAH RIVER  
COMPANY LLC**

**Defendant.**

**Case No. 1:03-484-23BG**

**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the forgoing defendant's second memorandum in support of motion for summary judgment has been served on Plaintiff by overnight delivery, postage prepaid via courier and addressed to:

Christopher Lawrence  
2740 Highpoint Road  
Snellville, GA 30078

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Dated this June 24, 2004

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
AIKEN DIVISION**

**CHRISTOPHER LAWRENCE,  
Plaintiff,**

**Vs.**

**WESTINGHOUSE SAVANNAH RIVER  
COMPANY LLC  
Defendant.**

**Case No. 1:03-484-26BG**

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO  
DEFENDANT'S SECOND MOTION FOR SUMMARY  
JUDGEMENT**

Pursuant to the Court's briefing order of June 14, 2004, and the Court's instructions, the Plaintiff submits this memorandum in opposition to WSRC's motion for summary judgment. It is the Plaintiff's position that the Defendant did not follow the Court's instructions. New material has been added to Defendant's second brief; this material was not part of the discussion before the Court nor was it included in the Fact Statements filed with the Court of June 17, 2004. Defendant improperly added the following contested matters to the list of uncontested matters.

1. All references to Plaintiff's mitigation of damages.
2. All references to alleged racial discrimination claims.

Plaintiff asks the Court to review hearing tape in which the uncontested facts were agreed. Defendant changed item 18 from "Dr. Botnick's position regarding the Plaintiff's attendance was negative" to "Dr. Botnick's position regarding Plaintiff attendance was *skeptical*." Defendant changed item 49 by omitting "and is incorporated into" which modifies the

meaning of the statement. The similar in item 16 Defendant omitted "by WSRC's medical department". In item 17 Defendant omitted 'made documented statements' which implies that the statements were unsubstantial. The intended effect of each of these omissions is to diminish the animosity that Dr. Botnick directed toward the Plaintiff. This animosity gives-rise to the underlying causes which staged the inappropriate termination of the Plaintiff. While Plaintiff does not argue that his dismissal was based on racial discrimination, the Plaintiff does argue that racial animus was a motivating factor for Dr. Botnick (and for Ralph Thigpen).

Plaintiff wishes the Court to use as a key reference the relevant material from Plaintiff's filing on February 4, 2004. Supplemental Amendments to Plaintiff's Responses to Defendant's Summary Judgment, February 29, 2004, Plaintiff Responds to Defendant's Reply Against Supplemental Amending Responses, and January 19, 2004, Plaintiff's Response to Defendant's Memorandum in Support of its Motion for Summary Judgment.

**PLAINTIFF DISPUTES DEFENDANT'S POSITION  
RELATIVE TO PLAINTIFF'S ARGUMENT THAT  
JUST BECAUSE AN EMPLOYEE HANDBOOK EXISTS  
DOES NOT MEAN THERE IS AN EMPLOYMENT  
CONTRACT**

WSRC entered into A \$345,000,000,000 contract with the Department of Energy to manage and operate the Savannah River site. One of the conditions of the WSRC-DOE agreement was WSRC's obligation to create appropriate conditions of employment for a work force which was technical, experienced and stable. As part of their agreement with DOE, WSRC published several manuals outlining the relationship between WSRC and its workforce. Plaintiff contends that the "5B Manual" and all of its sub-parts (i.e. Section 2.9, 2.12, 2.24, 3.6, 3.13, and 3.15) together with other

publications are part of the contract of employment created by WSRC to protect its position with DOE.

Defendant argues that Plaintiff cannot rely on a particular clause or provision of the 5B manual (or other manuals) unless Plaintiff has read the clause and then conformed his behavior to the provisions of the clause. This argument goes directly against the South Carolina Supreme Court's holding in Small v. Spring Industries, 357 S.E.2d454 (South Carolina 1987). In *Spring*, the Court specifically considered the unilateral contract nature of the relationship and held that, since the company drafts the documents and unilaterally states all of the provisions, the employee's only obligation is to perform work under the agreement. The company is then bound by the provisions it drafted. Defendant's argument is a mis-reading of the *Spring Industries* holding. The *Spring Industries* holding has been re-affirmed in Kumpf v. United Telephone, 429 S.E.2d869 (S.S. Court of Appeals 1993) and Williams v. Reidman, 529 S.E.2d28 (S.C. Court of Appeals 2000).

Following the *Spring Industries* reasoning, a jury decides which documents form the employment contract between Plaintiff and Defendant.

Once the documents are identified it is a question of law for the judge how the particular provisions are to be interpreted. Plaintiff argues that certain elements of the DOW-WSRC agreements (DOE Order 350.1) are part of the employment contract because they obligate WSRC to implement a suitable work environment. Plaintiff argues that the 5B Manual (and its condensed version, the Employee Handbook together with the Rules of Conduct) is part of the employment agreement. Plaintiff argues that the 8Q and 5Q Manuals are part of the employment contract because they define certain safety standards and procedures which are an integral part of the work environment. Defendant's argument, if taken to its logical conclusion, would mean that every employee would have to read and understand every provision of these various

documents to have any claim for unjust termination. Not only is this ignorant on its face, but also would make a mockery of the South Carolina law.

### **WSRC STAGED PLAINTIFF'S TERMINATION MOTIVATED BY BOTNICK'S PERSONAL ANIMUS**

WSRC medical doctor Robert Botnick strongly desired to terminate plaintiff's employment which was motivated by personal animus and not by professional medical opinion. (See Botnick's negative comments in plaintiff's medical file and employment file in plaintiff's Supplemental Amendments to Plaintiff's Response to Defendant's Summary Judgment filed court date 02/04/04, page 4, middle paragraph starting at if it had been left up to Botnick to page 5,6,7 to the middle paragraph ending at performed on 08/03/00)

Botnick reported to WSRC management that there was no evidence of his contacting us relative to foot surgery. (See Botnick's deposition on page 51,52,53 and 54) (see Botnick's dep. On pages 21 line item 7 to through page 23 ending at line item 17) This material is referenced at bottom of page 3 third sentences to top of page 4 ending at (Tab 82 WSRC Law 380 in the plaintiff's 02/04/04 filing to the court titles as Supp. Amendments to Plaintiff's Response to Defendant's SMJ. See (SAPR).

**(c) Botnick's comments regarding plaintiff's business activities** (See plaintiff's Supplemental Amendments to Plaintiff's Response to Defendant's Summary of Judgment filed court date 02/04/04, page 3 middle paragraph to page 4 top paragraph to the statement of Medical was notified) See (SAPR). WSRC uncontested these factual statements on June



14, 2004. See point # 20. Botnick under oath testified he never spoke to plaintiff's doctor but his medical notation on 08/15/00 contradicts his testimony under oath. (see Botnick dep. Page 24 line item 3 through page 25 line item 8) Botnick admits under oath that he has been known to make errors on occasion and what he believes on this own personal animus against the plaintiff. (See Botnick's dep. On page 25 line items 9 to 21)

Botnick's personal animus forces plaintiff back to work before certificate of disability states. (see Botnick's dep. pages 25 line item 22 through page 28 line item 21) Botnick's personal animus against the plaintiff provided input for placing the plaintiff on probation. (see Botnick's dep. pages 29 line item 23 through page 30 line item 16) Botnick's personal animus against the plaintiff contradicts what he earlier stated to the court and to the plaintiff's management of no evidence given for surgery. (See Botnick's dep. pages 31 line items 15 through page 32 line item 5) Botnick's open admission further shows personal animus against the plaintiff referring to targeting. (See Botnick's dep. pages 37 line item 17 through page 38 line item 1 to 17) Botnick's personal animus against the plaintiff caused him to ignore the plaintiff's medical condition and plaintiff's physicians notes. (See Botnick's dep. pages 39 line item 1 through line item 9) (See Botnick's dep. page 39 line items 25 through page 40 line items 1 to 8) (See Botnick's dep. page 40 line item 13 through page 43 line item 11); Botnick's personal animus against the plaintiff violated WSRC policy on disability that consequently breached the Family medical leave Act. (See Botnick's dep. page 43 line item 19 through page 44, and 45 line item 22). Dr. Botnick's own personal animus against the plaintiff drove him to make calls to the plaintiff's business and document statements concerning the plaintiff's personal vehicle. (See Botnick's dep. pages 45 line item 25 through pages 46,47,48, and 49 ending at line item 24). Botnick's personal animus goes beyond WSRC established and approved policy for disability.

(See Botnick's dep. page 51 line item 2 through page 52 line item 1 to 25).

Because of Dr. Botnick's personal animus against the plaintiff, his decisions were solely based on the plaintiff's business, car parked at plaintiff's business, and his personal dislike towards the plaintiff as documented and uncontested by WSRC.

**Botnick's personal animus against the plaintiff can be summarized in his notation. (see plaintiff's book 1, tab 36, exhibit 126) this shows Botnick's dislike, unbelief and discredit of the plaintiff's medical condition.**

All references from Botnick's Deposition taken on 11/12/03 are located as followed:  
(pages 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, and 52 are located in the plaintiff's book 1, tab position 50 filed in Court on 01/19/04 page 24 and 25 is located in plaintiff's book 1, tab, tab positions 18 and 19 that was also filed in Court on 01/19/04). See (PRDM) Page 54 is located in plaintiff's book 3, tab position 82, filed in Court on 02/04/04). See (SAPR)

### **THIGPEN'S PERSONAL ANIMUS AGAINST PLAINTIFF AND THIGPEN'S DISCIPLINARY PROBLEMS**

Ralph Thigpen, WSRC first line supervisor who desired to terminate plaintiff's employment which was motivated by personal animus not by company policy (i.e. involvement relative to plaintiff's contacts), (negative comments during first meetings) (conversation on 8/27/01) (Thigpen's personal disciplinary problems) and the negative attitude and terminology used by Thigpen.

Although Westinghouse conceded to the extent of the plaintiff's dispute they did not fully recognize Thigpen's inappropriate behavior, intimidation, and communication

issues in their memorandum in response to the plaintiff's statement of contested facts filed to the court on June 22, 34. Westinghouse altered the relevance of the plaintiff's disputed points of Thigpen's behavior.

Thigpen admits to the count under oath he displayed inappropriate acts which include intimidation (See Thigpen's dep. Page 3 line item 16 through page 4 line 1 to 4) Thigpen received yet another contact for inappropriate behaviors, intimidation and abuse towards WSRC employees and managers. (See Thigpen's dep. Page 4 line item 6 through line item 10) Because Thigpen's history of abuse, intimidation, and communication problems with conflict, HR recommends he be removed from the supervisory position. (See Thigpen dep. Page 4 line item 13 through page 5 line items 1 to 12). Thigpen's abusive behavior disciplinary problems are supported by WSRC shift managers (SOM's). (See page 6 line item 6 through item 12) Thigpen's personal animus against the plaintiff drives him to provide negative information to his managers. (See Thigpen's dep. page 6, line item 23 through page 7 line items 1 to 12) Thigpen's personal animus against the plaintiff had negative meetings and used intimidation language toward plaintiff. (See Thigpen dep. page 14 items 5 through page 16 line item 18) Thigpen still continued to intimidate by cursing and using abusive language as a part of him having chronic disciplinary problems. (See Thigpen's dep. page 16 item 19 through page 18 1 to 9) Thigpen, after receiving warnings from upper management still continued to curse, intimidate plaintiff and WSRC employees. (See Thigpen dep. page 18 items 10 through page 21 item 25) Thigpen had boasted of situations which involved terminations of WSRC employees and military personnel. (See Thigpen dep. page 22 item 7 to 13) Thigpen's personal animus against plaintiff was displayed when he instructed the plaintiff to return to work from approved medical disability without proper guidance from plaintiff's physician. (See Thigpen dep. page 22 item 17 through 21) Thigpen's personal animus

against the plaintiff drives him to order the plaintiff to return from approved disability even after knowing the plaintiff's medical circumstances. (See Thigpen dep. page 23 item 5 through 12) Thigpen's personal animus against the plaintiff caused him to testify under oath of a making harassing phone calls to the plaintiff. (See Thigpen dep. page 23 item 13 through 18) She Thigpen dep. page 24 item 6 through item 14) Thigpen admit to having major issues in the area of personal conflict and communication, complaints and grievances filed. (See Thigpen dep. page 24 item 15 through pages 25, 26, and 27 item 1 to 21) Thigpen's area of conflict, abusive language, and threatening actions were recorded by WSRC supervisor during a confrontational aggressive showing of Thigpen's behaviors which he absolutely admitted to under oath. (See Thigpen dep. page 29 item 9 through 19) and (See Thigpen dep. page 30 line item 11 through 21) Thigpen's personal animus against the plaintiff with the most chronic display of intimidation, boasting, cursing with disregard to WSRC's Rules of Conduct that can be displayed and yet he admits to the court these actions without remorse. (See Thigpen dep. page 30 line items 22 through pages 31,32,33,34 line items 1 through 22) WSRC managers Julie Dunning, Carlton Travis, and Matthew Miller all documented Thigpen's inappropriate and intimidating behavior. (See Thigpen dep. pages 36 line items 15 through pages 37,38,39,40 and 41 line item 1 through 16) Thigpen's personal animus against the plaintiff created an adverse condition on August 27, 1002 by Thigpen yelling over the plaintiff's conversation which was typical intimidation Thigpen often displayed. (See Thigpen dep. page 4 through pages 42 line item 1 through 3) Thigpen's host of disciplinary problems involved an alleged incident (sexual act) in WSRC's work area know as the blister area. (See Thigpen dep. page 43 line items 18 through page 44 line items 1 through 7) Thigpen's ownership of disciplinary problems in all fairness rises to the level of termination for the many reports brought against him involving personnel conflict, intimidation, cursing employees and managers. (See Thigpen dep. pages 44 line

items 8 through pages 45 and 46 through line items 10) (See Thigpen dep. pages 47 line items 7 through pages 48,49, and 50 line items 1 through 6) Thigpen's major disciplinary problems fell on deaf ears relating to WSRC acting appropriately. (See Thigpen dep. pages 50 line items 7 through page 51 items 1 through 14). In addition to the deposition questions showing Thigpen's personal animus against the plaintiff and Thigpen's host of chronic disciplinary problems, the plaintiff wishes the court to see all points from 12 through 16 of referenced relevant material submitted to the court regarding Thigpen in the plaintiff's brief statements of fact filed 6/17/04. Thigpen's personal animus against the plaintiff reported untruth to Dave Olson concerning plaintiff's son medical condition and the plaintiff's conversation of 08/27/01. Plaintiff's position was one which his son was in University Hospital on the night the plaintiff's work shift returned for scheduled days off. The plaintiff requested to remain at hospital until wife relieved him. This was on 08/25/01 instead of what is portrayed regarding the dates, (See plaintiff's book 2, tab 89 exhibit 258A third number. Filed in Court 02/04/04) (See SAPR)

It was two days later that the plaintiff was absent supported by a medical excuse. Thigpen's disciplinary problems are supported by Earl Brass, a level manager at WSRC (See Brass Deposition Book 1 tab 16 exhibit 70 page 4, line items 18-25, exhibit 71 page 5 line items 1-25, Exhibit 72 page 6, line items 1-25, Exhibit 75 page 11, items 1-25 and exhibit 76 page 12, item 1-25, filed court date 01/19/04( See (PRDM)

Seaborne Warren and Ralph Thigpen's conversed of breaking up Plaintiff's disability. (See affidavit of Reginald Forrest in Book 3 tab 76 exhibit 280 last paragraph, filed court date 02/04/04) See (SAPR)

All referenced material related to Thigpen's deposition that was taken under oath on 11/12/03 is located in the plaintiff's



book 1, tab position 1, filed to the court on 01/19/03; See (PRDM)

See pages of relevance:

3,4,5,6,7,14,15,16,17,18,19,20,21,22,23,24,25,26,27,29,30,31, 32,33,36,37,38,39,40,41,42,43,44,45,46,47,48,49,50 and 51)

**WESTINGHOUSE HUMAN RESOURCES  
REPRESENTATIVES  
NEGATIVE POSITIONS**

WSRC'S Human Resources manager Bill Soloko pushed toward plaintiff's termination and requesting management to use specific phrases within the stages probationary contact terminology that would adversely and negatively be used against the plaintiff referred to as phraseology. (See plaintiff's books 3, tab 77, and exhibit 283 filed in Court on 02/04/04) See (SAPR) Bill Soloko, a HR manager documents in the plaintiff's employment file ("I'm told he sells this original, personally designed ties at Lionel Smith. Do you have any with his own label?" (See plaintiff's book 3, tab 78, WSRC memo's Kawr 360, 474, 475; filed in Court on 02/04/04) See (SAPR) The defendant has argued the request was WSRC relevant due to the investigating the plaintiff's conduct during his absence. The plaintiff disputes WSRC position based on the context of the note referring to the plaintiff's personal designer ties. Another WSRC's HR Representative, Robert Moody, sent e-mails to Lorri Lott and Dave Olson which was also negative and adverse and adverse to the plaintiff's employment without discussing the allegations with the plaintiff's. Robert Moody documents Chris turned up the heat on his management. They now want to shoot for termination. I am going to call Chris today and get his side of the story. We may want to jump right to termination. (See plaintiff's book 3, tab 96 WSRC -Lawr 670; filed Court on 02/04/04) See (SAPR)



**DAVE OLSON DOCUMENTS UNTRUTHS  
REGARDING PLAINTIFF'S  
ABSENCES**

Dave Olson, the operation manager, sent notes to Bill Sokolo, Leroy Myrick, of HR. and to the Vice and President of Nuclear Management Material Division (NMMD) Frank Jordan and Jim French expressing strong discontent referring to the plaintiff's absence relating to his business. Point being, WSRC has had a comprehensive handbook descriptively called 5B Manual (specifically 2.12 and 2.24) that allows for approved absences or time off without pay which the plaintiff met.. Olson's memo stated ("When do we move to the next level of discipline with Mr. Lawrence? He will have missed 2 shifts absent without pay (May 30 and now June 5) since the informative contact we gave him 2 weeks ago, when he ran out of time bank time (vacation) and had dipped into the AWP ( absent without pay) for >20 hours YTD. I cannot continue to invest the amount of time required in this one operator to get him qualified and available for shift work if he won't come to work on a regular basis. We need to get his attention so he can decide which has priority, his SRS employment or his clothing business. On a different memo to the same WSRC personnel referring to the plaintiff's same absence, Olson documents on 06/05/2000 ("Today's absence is unexcused without pay. What is the next level of discipline I need to take with Mr. Lawrence - corrective contact, corrective with some time off, or higher? Please let me know. The plaintiff's position regarding Olson's false statement is as such; Steve Williams; Dave Olson's Deputy Manager approved the plaintiff's absence without pay. (See Plaintiff's book 3, tabs 83 exhibit 114, and bottom memo from Williams on 06/02/2000 filed in Court on 02/04/04) See (SAPR). The plaintiff's position regarding the May 30, 2000 absence, is his son was in University Hospital from 05/27/00 to 05/31/00. The WSRC 5B Manual also allows for dependent care. (See plaintiff's book 3, tab 89 exhibits 258A, and the third page from front

regarding son's medical condition. Filed in Court 02/04/04) See (SAPR) To further show the plaintiff's absences were not as Olson portrayed them to be to his senior level management and HR, see (plaintiff's book 1, tab 30, exhibits 102 and 103.) This document accounts for plaintiff's absences and how and what pay status used, and the noted reason for absences filed in Court on 01/19/04). See (PRDM) The relevance of material submitted from Botnick, Olson, WSRC's HR Representatives, and Thigpen show they were not truthful and participated in staging of plaintiff's termination.

### **PLAINTIFF'S TERMINATION WAS NOT STATIONED AND IMPROPER**

The termination process occurred while the Plaintiff was on his scheduled shift time and days off; in addition the plaintiff had a doctor's excuse. (See Book3, tab 93 exhibit 365, calendar of August 2001 calendar has the plaintiff off on 28<sup>th</sup>, 29<sup>th</sup>, and 30<sup>th</sup>) (See Book 3, tab 96 item identified as WSRC - Lawr Plaintiff termination notice and meeting was conducted 08/29/01, filed court date 02/04/04) See (SAPR) (See Book3, tab 96 items identified as WSRC- Lawr 679 and 680 shows further that WSRC staged termination of plaintiff without any prior knowledge, while the plaintiff was scheduled off. (Note date of August 30, 2001 on documents) (Filed court date 02/04/04) See (SAPR). At the court deposition Dave Olson denied that a phone conversation between himself and Plaintiff had taken place regarding Ralph Thigpen's behavior and the Plaintiff's absence (See Book3 tab 93 exhibit 367 and Dave Olson's deposition under oath in Book 3 tab 94 page 12, line items 14-17 and line item 23- 25. filed court date 02/04/04). See (SAPR)

### **OPERATOR'S PROTOCOL IN THE EVENT OF ON AND OF JOBS EMERGENCIES**

Operator's protocol is such that notification is to be given to the control room in the event of emergency, absence or conditions that warrant the employee not being able to report to work. (See Book3, tab 85 exhibit 93 and 94 filed court date 02/04/04, note this specific situation that the plaintiff's request for time off had been approved without supervisor's consent); See (SAPR).

The WSRC'S 5B manual instructions are the controlling document for reporting off shift emergencies. The plaintiff's position is such that the term "management personnel" applies to anyone in management capacity within the NMMD department. The information conveyed on August 27, 2001 by the plaintiff was in line with policy and the control room note taken by Bruce Cane and given to David Nasson (management staff) and the other manager, then the note was given to Thigpen.

### **THE TERMINATION OF PLAINTIFF IS UNSUPPORTED BY WSRC'S PRESIDENT AND VICE PRESIDENT**

Termination of plaintiff is unsupported by WSRC President or Vice President and in violation of company policy as stated in the 5B manual. (a) Hierarchy of termination procedures, (b) Plaintiff treated different than others with similar situations ( Citation of request from the plaintiff for limited additional discovery), (c) Disciplinary contact conditions were satisfied, but WSRC still terminated plaintiff's employment) ( if designated, no inferences identity or show who individual is or who was acting in place of the WSRC President or Vice President) (See book3 tab 95 WSRC procedure practice 2.9 Rev. 6 for termination page 4 of 11, top section sentence paragraph, file court date 02/04/04) See (SAPR)

The defendant has held throughout their summary of judgment that WSRC President or designee may approve employee's termination. The Defendant improperly adds that the issue of

the president approved plaintiff's discharge is uncontested. The plaintiff's position relevant to the 5B manual is the only uncontested fact. WSRC on page 6 of their second summary of judgment still holds the position that by the affidavit of Lorrie Lott the president delegated approving the plaintiff's termination.(see plaintiff's book 3 , tab 83, Lorrie Lott's un notarized Affidavit signed on December 1, 2003)

Plaintiff disputes the Defendant's position.

1) Not material of fact existed to the Court or plaintiff that shows an approval by either WSRC's president or vice president

2) The affidavit of Lorrie Lott is an attempt to cover for WSRC breach of contract.

3) Notice during Dave Olson Dep. on November 12, 2003, pages 35 line item 23 through page 36, as a participant, he states under oath that the president office was involved to confirm the plaintiff's termination. Mr. Olson never sates any name or even if a designee was acting on the behalf of the president.

4) The plaintiff's position shows all relevant signatures of personal involved in the plaintiff's termination. There is no signature of this infamous designee. For a decision of this magnitude would always require accountability due to the effects of an employee life, family, livelihood.

5) Lott's recollection of events is after the fact. Lott's Affidavit is incorrect and untruthful. The plaintiff directs the court to book 3, tab 83, WSRC memos WSRC Lawr 679 and 680. Both documents show the plaintiff was terminated on August 30, 2001 contrary to Lott's sworn Affidavit of August 31, 2001.

6) WSRC' uncontested the plaintiff's termination form was dated August 30, 2001.

### **THE EFFECTS OF IMPROPER TERMINATION**

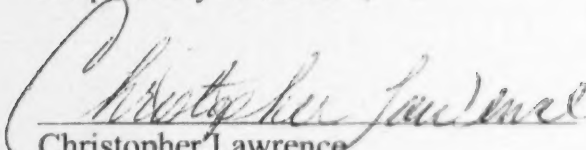
WSRC did not follow their own policies created in the 5B, 5Q, and 8Q manuals for terminations. (See plaintiff's book 3, tab 950. WSRC admitted to the court that the plaintiff did not receive an exit interview or a checkout interview. The plaintiff didn't receive prior notice of termination, and the plaintiff was on his shift scheduled days of during his termination. WSRC admitted in their uncontested facts point 45, point 46, point 49, point 5, and point 6 of relevant subject matter. The plaintiff asserts that the conditions were continuously met regarding inappropriate probationary contacts. Why was termination an option or choice by WSRC management and staff if the conditions were met?

### **PLAINTIFF'S DAMAGES**

The plaintiff asserts that WSRC actions of animus have been willful and wanton without regards to their own policies and the contractual agreements established with DOE. Wherefore the plaintiff prays that the Defendant's second summary judgment be denied and that this case is scheduled for trial such that the plaintiff recovers:

- (a) Lost wages, back wages, and front wages.**
- (b) Present values of future retirement benefits**
- (c) Medical cost and benefits**

Respectfully Submitted,

  
Christopher Lawrence

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
AIKEN DIVISION**

**CHRISTOPHER LAWRENCE,  
Plaintiff,  
Vs.**

**WESTINGHOUSE SAVANNAH RIVER  
COMPANY LLC  
Defendant.**

**Case No. 1:03-484-26BG**

**CERTIFICATE OF SERVICE**

This is to certify that I have date served a copy of the Plaintiff's Memorandum in Opposition to Defendant's Second Motion for Summary Judgment in accordance to the Court order dated June 14, 2004.

To: Charles F. Thompson, Jr.  
Attorney for the Defendant  
Westinghouse Savannah River Co.

LLC

1527 Blanding St.  
Columbia, S.C. 29301  
(803) 254-3300

From: Christopher Lawrence  
Pro Se  
2740 Highpoint Rd.  
Snellville, GA 30078  
(404) 277-0383

By depositing copy of the same by way of Federal  
Express Courier overnight to assure proper prepaid delivery.

This \_\_\_\_ 1<sup>st</sup> \_\_\_\_ day of July \_\_\_\_, 2004

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
AIKEN DIVISION**

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**CHRISTOPHER LAWRENCE**

**PLAINTIFF**

**vs.**

**WESTINGHOUSE SAVANNAH RIVER  
COMPANY LLC.  
DEFENDANT,**

---

**CAUSE FILE NO 1:03-484-27BG**

**MEMORANDUM OF OBJECTIONS TO THE  
MAGISTRATE JUDGE'S REPORT AND  
RECOMMENDATION**

This relation of partisanship and being partial toward the Defendant's counsel and their motion for Summary of Judgement, the Plaintiff objects and submits this memorandum in support of the Court's errors in understanding the material basis, facts, and the arguments of this case that set forth the predicates which ripen not for a summary motion but consideration for trial by jury. The Plaintiff objects to the Judge's (R&R<sup>1</sup>) as being an advocate and partisan whom he should recuse himself from further instruction in this case for not being fair.

In understanding the Court's position and acting as an advocate, the following points:

1. Denying all Plaintiff's motions, setting forth strict time constraints that which recognized only attorneys. (See SAPR<sup>1</sup> filed 02/04/04. p.1 and 2)
2. Responding to Thompson's initial Summary of Judgment filed on January 5, 2004 versus the Plaintiff's filing, allowing only 15 days for an appropriate Plaintiff's response. This allowed loopholes in favor of counsel.
3. The Defendant's counsel willingly violated and disregarded the Court with reference to the Conference Scheduled Order relating to discovery issues under Rule 26 (see answering Plaintiff's request exhibit 35 and exhibit 36 for Court)
4. Undisputed facts became part of the Court record on June 14, 2004, however the Defendant stated he had inadvertently used an incorrect word **skeptical** as opposed to the word **negative**, wording was allowed to be changed for the purpose of diminishing the content and meaning, and the Court allowed the change and viewed it as an inadvertent oversight by Defendant's counsel.
5. The Judge's treatment towards the Plaintiff is very antagonistic quoted by Defendant's counsel during the mediation hearing.
2. The [magistrate judge] drafting his (R&R<sup>1</sup>) and introducing disputed material from the Defendant's Summary Judgment as if the material was true and undisputed.

Plaintiff's references previously submitted document are noted below.

- 
- 1) Plaintiff's Response to Defendant's Memorandum filed date 01/19/04 as :(RDM)
  - 2) Plaintiff's Supplemental Amendments to Plaintiff's Response filed date 02/04/04 as: (SAPR).
  - 3) Defendant's Motion For Summary Judgment filed date 01/05/04 as :(DMSJ)
  - 4) Response to Lawrence Allegations of Errors filed date 07/06/04 as (RLAE) 5) Plaintiff's Memo in Opposition to Defendant's Second Summary Judgment filed date 07/01/04 as:(PMODSS)

6) Court Briefing Order file date 06/14/04 as: (BO) 7) Plaintiff's Supplemental Brief filed date 05/24/04 as: (SB) 8) The Court Report and Recommendation filed date 07/19/04 as: (R&R).

9) Plaintiff Responds to Defendant's Reply, filed on 02/29/04 as (PRDR)

During the Court's (BO<sup>1</sup>) pm June 14, 2004 the Judge allowed the Defendant to gain advantages by only allowing the Plaintiff to submit a brief in opposition to the Defendant's second memorandum for Summary of Judgment filed June 24, 2004. While the Order specifically allows the Defendant to state a position, receive a response, then file an additional memorandum without the Plaintiff having the opportunity to do the same. See the Court's (BO<sup>1</sup>) entered on June 14, 2004. In addressing the Court's (R&R<sup>1</sup>) filed on 07/19/04 (see page 4 of 30 first two paragraphs). The Plaintiff **objects** to the Judge's (R&R<sup>1</sup>) referring to (Fact at ¶6), the Plaintiff contrary to the Judge's allegations did introduce more than 2.9 as a part of the 5b manual. (See page 3 top paragraph beginning at the Plaintiff **contends** and ending at **DOE** in Plaintiff's PMODSS<sup>1</sup>) filed on 07/01/04. In **objecting** to the Court's (R&R<sup>1</sup>) **Factual Background** information, the Plaintiff asserts that on page 6 of 30, the Judge switched from the Statement of Uncontested Facts in this case to points that are contested and should not be used as a balance to state the favorable points for the Defendant. Arguably, this transition is an attempt to show partisanship and advocacy referencing the Defendant's second brief; points relevant to year 1989 through and up to 1999 that were previously stated were **abandoned**. The Judge aiding counsel for the Defendant carefully constructed his (R&R<sup>1</sup>) and did so go contrary to what he specifically communicated on 06/14/04. WSRC in its second Memorandum filed on June 24, 2004 does not raise the issues that the Court specifically warned against at the beginning of the hearing on June 14, 2004 and reiterated again at the close of the hearing. Counsel for the Defendant in fear of not complying with the Briefing Order abandoned material dated 1989 through 1999. The

Plaintiff noted (exhibit 37) to the Court on June 23, 2004 reminding that it warned against this immaterial of irrelevance, the Defendant in its second memorandum states clearly on page 1 that his memorandum addresses only the legal and factual issues necessary to Summary of Judgment. (See Defendant's second summary filed) ***the Plaintiff strongly objects to the Court rewriting and adding what the Defendant abandoned and the Court warned against.***

During the Court briefing on June 14, 2004 the instructions from this appointed Judge conveyed that he was not interested "in material related back to 1996, but rather those facts related to the year of 2000 up to present." (See tape of hearing on June 14, 2004) However the Court contradicted its position by adding immaterial dating from 1989 to 1999. The Court included the uncontested facts along with the Defendant's Summary for Judgment motion. In all fairness to the Pro Se litigant the contested facts from the Defendant's Summary for Judgment motion are disputed, however this Court has reached a legal conclusion from this Summary. Point being a legal conclusion cannot be determined based on contested untrue facts. **A jury must decide what determinate factors give rise to a legal conclusion.**

Defendant's motion for summary of judgment points are disputed and objected to for all material dated from page 5 of 30 and 6 of 30 of the Courts R&R starting at

(15 see fact at ¶13 in 1989 to page 7 of 30 stopping at performance review.<sup>22</sup>)

Pages 6 of 30 and 7 of 30 are questions for a jury to decide. If the Court wishes to consider the Defendant's points from 1989, the Court in fairness (**which has not been the case**) should consider and list the Plaintiff's disputed facts filed and references of specific dispute relevant to the 1989 to 1999 dates in the Defendant's Memorandum of Summary. The Judge is not fair and is partial against Pro se litigants, not one single disputed fact from the Plaintiff's Brief Statements of Disputed Facts filed on July 1, 2004 were listed by this Court (R&R<sup>1</sup>). However, if this Court positioned itself to accept the Defendant's immaterial from inferences 16



through 22 and 24 through 28, 31, 32, 38, to the extent of Defendant's Summary, 39, 40, 43, 44, through 47, 49, 53, 54, 56, 58, 63, and 68, of the Court's (R&R<sup>1</sup>), **the Court has eliminated a proper jury process.** The Court should then position itself to state the Plaintiff's points of opposition. Allowing these motion statements to be concluded as factual evidence in nature would then by this imaginary **liberalism the judge** discussed on pages 2, 19, and 20 of his (R&R) would then include the Plaintiff's position from his responses to the Defendant's irrelevant immaterial dated from 1989 to 1999. According to WSRC's 5B manual procedure 2.7 pages 5 of 11, **any informative contacts should have been removed from the Plaintiff's field file and destroyed.** (See Plaintiff's exhibit 2). (See also the Plaintiff's RDM<sup>1</sup> filed on 01/19/04, pages 10 starting at second paragraph NMMD and ending on page 17 top paragraphs). (See also from the Plaintiff's RDM<sup>1</sup> response; pages 21 starting at the Plaintiff "disputes and ending on page 24 at days off)." The Plaintiff objects to the Court (see 15 Facts at ¶13); using parts of a fact statement without the entire support of the reason for the Plaintiff statement. To support the Plaintiff's position, the Plaintiff's physician specifically and implicitly states "he, (plaintiff) can not drive a manual car, possibly use wheel chair." (See Court exhibit P5). Note, from exhibit P5, Botnick is pushing the issue. This is about 3 weeks postop. Had the WSRC staff Dr. Botnick requested and reviewed the Plaintiff's physician medical file he would have been aware of the Plaintiff's personal physician's direction relevant to exhibit P5. (See Plaintiff's SAPR1 filed on 02/04/04, pages 3 starting at the middle of the paragraph where Dr. Botnick made inappropriate entries, ending on page 5 at crutches) The Plaintiff objects to the Court have biased position relevant to (24 See Defendant's Motion for Summary Judgment[40-1] at Tab 21). It appears that the Court does not, and will not accept the Plaintiff's position because it has pre determined a question that should be asked before a jury and has aligned its position towards the favorite party(Defendant's). If this Court reached

its decisions on legal fairness, it would use this liberalism that the Judge discussed. Also the Court should consider the position and document as such. This depiction of the Defendant's motion for summary judgment is enamelized throughout the Judge's (R&R<sup>1</sup>). The Plaintiff opposes and objects to note 24 argues page 24 at bottom paragraph starting at the Plaintiff disputes Thompson's and ending at page 25 middle paragraph at (see tab 28 page 6 and 7 lines 6-25 exhibit 97, 98). In addition to the previous reference and a part of the Plaintiff's Brief that information stated and referred to from the 5B manual, the Plaintiff argues the three days of being late were documented inappropriately however, these specific days were made up and under WSRC policy it is counted as regular shift days worked according to the 5B manual 3.3 page 9 of 11. If the Defendant's point is taken, double jeopardy would then follow. The Plaintiff argues that the company approved and counted the time as make-up time to which the 5B manual allows. (See page 16 of 17 procedure 2.12 second paragraph. See page 9 of 11 procedure 3-3 the section at Schedule) regarding the 6 vacation days, these were all approved along within the guidelines of the same 5B manual and the vacation time was drawn from the Plaintiff's time banked hours. (See exhibit 1 pages 4, 5, and 6). Consequently (see exhibit 3 from procedure 2.12) when hours are used from time banked hours and according to the 5B manual Procedure 2.12 page 16 of 17). Note: Use of time banked hours when scheduled is not considered when evaluating absenteeism. The Plaintiff objects to the Court's biased position relevant to (25 See Defendant's Motion for Summary Judgment [40-1 at Tab 22) This Court has been given false and untrue information in relation to the Plaintiff's vacation through April 18, 2000. (See Plaintiff's exhibit 1 page 6 that clearly shows Plaintiff had vacation and hours were drawn time banked hours up to April 18, 2000). Another important point which the Plaintiff objects to is such, that managers do not set the limit of absences or vacation. This is automatically computed by the number of years of service and is governed

by the 5B manual 2.19 procedure for time banked pay. See also (RDM<sup>1</sup> pgs 25 starting at bottom paragraph and ending on pg 26 at character and employment). The Plaintiff asserts, based on exhibit 1 Time and Attendance Warehouse history records, from April 19, 2000 the Plaintiff did indeed manage his attendance appropriately and followed the 5B manual as it relates to request for time off without pay, makeup time, and emergencies. (See pages 4 through 10 of Plaintiff's exhibit 1) (See 5B Manual Procedure 3-3 page 8 of 11 at Make-up Time exhibit 4)(See 5B manual procedure 2.12 exhibit 5 and 2.24 exhibit 6 as relevant to emergencies, disabilities, and illnesses) The Plaintiff object to the Court's biased position relevant to (26 See Defendant's Motion for Summary Judgment [40-1]Tab 25). The Court should review as to why the Plaintiff was yet given another informative contact when according to his time warehouse records for absences that do not fit the profile of attendance problems as the Defendant claims. (See Plaintiff's exhibit 1 pages 6 starting at date (4/18/2000; 2.4 time off without pay) (4/19/2000; 10.0 time off without pay) (4/20/2000; 2.0 time off without pay). According to attendance records, Plaintiff only missed 14.4 hours in NMMD, which were approved by WSRC management, but yet the Plaintiff received yet another contact on 5/09/2000 or 5/10/2000. However, the false information presented and believed by this Court taken from Tab 25 states clearly that the Plaintiff had no personal time remaining in his bank hours for illnesses/ emergencies in April 2000. The facts from the record simply shows that yet another untruth was stated and this Court chose to deliberately believe as such. Again time off on 4/18/2000, and 4/19/2000 was valid based on WSRC medical sending the Plaintiff home. (See Plaintiff's Book 1; tab 29 exhibit 99 starting at medical entry 04/19/00) (See also RDM<sup>1</sup> page 26 second paragraph starting at On April 17, and ending on page 26 at stay home). Certainly the Plaintiff's time record is accurate however, the contact information has been shown to be altered.(See SAPR<sup>1</sup> page 9 starting at "this is the normal tactic and ending on page 10 top paragraphs at

company policy"). The Plaintiff object to the Court's biased position relevant to (27 See Defendant's Motion for Summary Judgment [40-1]Tab 26). Plaintiff's evidence shows the Court that the information presented by the Defendant is false relating to June 5, 2000, and April 10, 2000. Plaintiff guides the Court to (see RDM<sup>1</sup> pages 26 bottom paragraph at the Plaintiff disputes to page 27 top paragraphs up to approval of management). (See Book 1; tab 33 exhibit 114 bottom forward header). To back up the Plaintiff's position see the attached exhibit 1 page 8; June 5, 2000 record note. (See SAPR<sup>1</sup> pages 8 starting at bottom paragraph at Dave Olson, in notes to 9 and 10 ending at top paragraph at time off without pay). (See exhibit 7 attached and the 5B manual Procedure 2.12 pages 15 of 17 item #2 ***Time off without pay***). See Plaintiff's record of the specific date 06/5/2000, which obviously shows the time of was appropriately approved. This was not presented accurately by both the Defendant and the Court in the (R&R<sup>1</sup>). The Plaintiff object to this Court's biased position relevant to (28 See Defendant's Motion for Summary Judgment [40-1]Tab 27). The Plaintiff asserts that the information stated in the Defendant's tab relating to a verbal confrontation involving Seaborn Warren and the Plaintiff was made up and Mr. Warren was instructed by WSRC management to present the related document information. The series of events were established upon learning of the Plaintiff suing WSRC. (See RDM<sup>1</sup> page 27 starting at "the Plaintiff disputes" and ending at page 28 "Warren's Dps., exhibit 128-146"). Most importantly, Warren's deposition taken on 11/12/03 clearly states the information within the document was made up an untrue and the Defendant's exhibit 27 which the Court has believed that he never placed (Defendant's exhibit 27; tab 27) into the Plaintiff's employment file of given to the Plaintiff specifically. (See attached Deposition of Ralph Warren page 4 line item 5 through 23; Plaintiff exhibit 124). Evidence shows the Court that the document was fabricated, the testimony from Warren cannot be believed, that the document was drafted to support WSRC, and that during the

conversation between Warren and the Plaintiff, Mr. Warren agrees with him getting in the Plaintiff's space or face. (See the attached deposition pages 16 starting at line item 5; Plaintiff's exhibit 118 through page 17; exhibit 119, and page 18 exhibit 120; specifically ending at line item 13 of Ralph Warren; deposition taken on 11/12/03). With respect to the document and according to the 5B manual procedure 2.7 standards, that documentation pertaining to formal discussion and or meetings is accomplished by completing WSRC's forms OSR 5-317 and 5-318. (See attached Plaintiff's exhibit 8 from the 5B manual procedure 2.7) The Plaintiff asserts that; given his relationship with Warren that certainly an incident of this fabricated magnitude surely would have been described in the form of a contact. Nevertheless, this was not done because the document was created after the Plaintiff filed an actionable cause against the Defendant. The Plaintiff objects to this Court's biased position relevant to (31 See Defendant's Motion for Summary Judgment [40-1] Tab 1, Plaintiff Dep. at p 85) to the extent that, the Plaintiff on the days of July 27, 28, 2000, and, August 3<sup>rd</sup> of 2000, the Plaintiff didn't specifically know what time frame his physician would establish disability. Therefore, the Plaintiff could not give a specific date for duration of disability. The Court in review of the Material fact should notice in the Plaintiff's Book 1, Tab 48, Court exhibit P2, shows the Date the Certificate of Disability signed was on 8/5/2000. The standard that is most reasonable is such that the Plaintiff's physician performed the procedure, then required the Plaintiff to return to his office to evaluate the surgery and then made his medical recommendation on 8/5/2000 for the duration of disability. (See the following WSRC documents that again show the Plaintiff did contact his management absent of the 5B manual procedure 2.24 revisions 5 in particular requiring such weekly, monthly, and daily notifications):

See WSRC Lawr 792 which shows on 5/22/2000 medical was notified  
See Court exhibit P2 (KK650) for date purposes as 08/05/00



1) See Plaintiff's exhibit 157 to show when the Plaintiff first arrived into NMMD he advised his first line supervisors Seaborn Warren and Barry Baynham.

2) See Plaintiff's exhibit 161 to show a report of disability was done and Signed on the 10, but the note specifically states: ongoing condition. Time started on 7/30/00, and expected duration of the medical Procedure and healing is 6 to 8 weeks.

The Plaintiff objects to this biased position relevant to (32 See Defendant's Motion for Summary Judgment [40-1], Plaintiff's Dep. at p 86).

The Plaintiff still asserts that under the 5B manual procedure 2.24 revision 5 under the employees responsible page 3 of 22 does not require an employee to make notification once released to disability. (See Plaintiff attached exhibit 6, pg 3 of 22, 11 of 22, 13 of 22, and 14 of 22).

The Plaintiff still presents all referenced from the Plaintiff's (RDM<sup>1</sup>, page 29, at "Dr. Botnick falsely" to pg 30 at "aware"). The differences in the revision of the 5B manual are important to show that now procedure 2.24 does have a required weekly call in. This was yet another change to the 5B manual as a result of the Plaintiff challenging the Defendant on its policy. (See exhibits 12, pgs 3, 4, and 13 through 18 in the new revision of the 5B manual procedure 2.24 revisions 7, to show a distinctive difference than the old revision 5 which the Plaintiff was under). The Plaintiff objects to the Court handling of note 34 as it relates to the willful disregard in changing the word "negative" to the word "skeptical". Why does the Court choose not to uphold a standard for the Defendant's counsel who is an experienced employment law specialist? He does know better not to change and serve an altered fact statement recorded in the Court proceeding intending to diminish the personal animus of WSRC's Dr Robert Botnick's behaviors, unprofessional and inappropriate medical Decisions. The Court's biased position toward the Defendant appears to excuse "his blatant violation as "inadvertently" used the incorrect word an in fact, the word should be "negative". It appears to the Plaintiff that



this conservative District Court will not punish a (native son attorney) for yet another violation of South Carolina law. However, the Court has turned a deaf ear to the Plaintiff's continued facts of personal animuses directed against him from Dr. Botnick and Ralph Thigpen that resulted in the inappropriate discipline probation contact and the Plaintiff being terminated. Relevant to (35 Fact at ¶19), (36 fact ¶20, and 37 Fact at ¶21), the Plaintiff does agree that Botnick began calling , but does not agree to the recovery time of only 3 weeks which Botnick felt was sufficient to recover, and the plaintiff was to be evaluated. However, this by no means shows that Botnick's animus towards the Plaintiff was diminished. Botnick's calls to the Plaintiff were driven by his personal animus against the Plaintiff and not by his professional medical opinion. (See PMODSS<sup>1</sup> filed July 1, 2004, pgs 4, 5, and 6).

Certainly these pages are evidence of pure fact from Botnick's deposition and therefore raise a question to a jury assuming these actions from the said above are true. The Plaintiff objects to this Court's biased position relevant to (39 Defendant Motion for Summary Judgment [40-1] at Tab 1, Plaintiff's Dep. at 93, 106)

The Plaintiff's position still holds that all phone calls relating to his disability duration should have been directed to the Plaintiff's physician and not the constant continued phone calls from non professionals trying to assert themselves as physicians and making physicians decisions relevant to the Plaintiff surgical procedure especially since a report of disability was made by Barry Baynham. (See Report of Disability, exhibit 161).

A phone call was made to the Plaintiff then documented to The Plaintiff by Barry Baynham on August 5, 2000 to check On Plaintiff's status. A Report of Disability was then submitted.

After submission of the Disability Report, Dr. Botnick altered the the content of this specific Report by what he wrote showing that WSRC added to or changed document, special attention in the bottom section of the Report of Disability contains a note from Botnick over a month and a half later stating "Bunionectomy & Tooth extraction RTW 9/22 Botnick". Point being this was also after a record was established. The Plaintiff filed a Notice of Employee Concern regarding to constant phones calls made by the Defendant as a part of a resolution. (See Plaintiff's exhibits 148 and 149). Concerning the Plaintiff's Dep. at pp 93, the Court has not been fair in presenting the whole truth. The entire deposition statement should be used to see why the Plaintiff responded that specific way. Referring to not calling WSRC management, see also (PRDM<sup>1</sup> Pg 30 at second paragraph to bottom of pg 30, at line 1-7), The Plaintiff shows the Court that the Defendant's statements are untruthful regarding this (42 Fact at ¶¶24,26). The Defendant told the Court in their January 5, 2004 Summary Judgment that on pg 8, at bottom paragraph, "the doctor's note indicated that Lawrence could return to work". Now in the uncontested facts to the Court on June 14, 2004 the Defendant changed his position to "but did not address whether or not Plaintiff could return to work." The Plaintiff's position regarding (44 Defendant's Motion for Summary Judgment [40-1 at Tab 30, p. 782). Botnick had tried throughout the Plaintiff's surgical disability to force the plaintiff back to work, and did not acknowledge or refer to the Plaintiff's physician release. (See Plaintiff's Exhibit 13, medical notes from Botnick that show on the following dates Botnick's **personal animus drove him to the obsession** of trying to enforce a (RTW) return to work) (See entry on 8/15/00 at 2:20 pm, see entry on 8/25/00 at 1:45 pm, see entry on 9/12/00 at 2:06 pm, and see entry on 9/12/00 at 4:45.) (See Botnick's animus's taken directly from his notes and deposition in the Plaintiff's PMODSS<sup>1</sup> filed on July 1, 2004, pages 4, 5, and 6) Botnick was examined in detail during his deposition on 11/12/2003, pgs 31 and 32, attached exhibits

195 and 196. Botnick did not know WSRC policy as it relates to 5B Manual procedure 2.24, revision 5. Dr Botnick was Confused. Under procedure 2.24, revision 5, exhibit 6 Attachment, the

(Employees are responsible for;

- Reporting any injury or illness promptly to management
- Following management directions in reporting to the nearest Available WSRC Medical Station if injured or ill while at work
- Following WSRC Medical directions with reference to treatment, Examinations, modified work etc.
- Complying with any and all pregnancy-related work restrictions Imposed by Medical, management and/or the Radiological Control Operations (RCO) department manager, if the employee Declares a pregnancy.
- Clearing through WSRC Medical after all work-related disabilities Before returning to the job site lasting longer than 24 hours.
- Clearing through WSRC Medical after non-occupational disabilities lasting longer than 24 hours.
- Refunding the difference to the company if total benefits while out of work on workers' compensation are in excess of their normal earnings.

Once Plaintiff gave appropriate notice to WSRC regarding Plaintiff's Surgery and medical condition, the Plaintiff was entitled to the appropriate Request. The Plaintiff satisfied the requirement noted in the 5B Westinghouse Manual. (The first notice was given to WSRC Medical Staff on November 10, 1998 through November 12, 1998, See Plaintiff exhibit 16 attachment), (the second given March 2000, See Plaintiff exhibit attachment 157), (Third notice given May 22, 2000 at 1:50 pm, See Plaintiff exhibit attachment 16), (Fourth notice Given July 28, 2000 and July 29, 2000. These notices were entered into Plaintiff's medical file See exhibit attachment 16)

**The Plaintiff's position regarding** (46 Defendant's Motion for Summary Judgment[40-1] at Tab 28) is still holding and that is neither Botnick nor Thigpen had the authority or release from the Plaintiff's physician to force a return to work. The Plaintiff



states that Thigpen was acting from his personal animus against the Plaintiff which the Defendant conceded that Thigpen's behavior was as the Plaintiff and other WSRC employees described. (See Plaintiff's PMODSS<sup>1</sup> Filed on 7/01/2004, pgs 6, 7, and 8 that Thigpen testified under oath in his Deposition taken on 11/12/2003 to having animus's and or Behavior problems and discipline issues) (See also Defendant's Memorandum Response to Plaintiff's Statement of Contested Fact filed on June 22, 2004, pgs 5, 6, and 7). The Plaintiff Agrees to the Court's position to the extent regarding (51 Facts at ¶28). However, the Plaintiff objects to the timing of intervening which in this case is especially important because of the personal animus against the Plaintiff from WSRC's staff Dr. Botnick. He specifically wanted intervention back on 8/10/2000 at 4:00pm when the Plaintiff recently had the surgical procedure on 8/3/2000. (See Plaintiff exhibit attachment 17). The Plaintiff objects to this Court's biased position relevant to (54 Defendant's Motion for Summary Judgment [40-1] at Tab 29) The Plaintiff still Holds to the position entered into the Court's record on June 14, 2004, (Facts at ¶¶24,26) that the note from the Plaintiff's physician only contained restrictions and not a Specific inference that the Plaintiff was released to return to work on the date thereof. The Plaintiff objects to the Court's biased position regarding (55 Facts at ¶30) to the extent that implies to the Plaintiff violated the Defendant's Rules of Conduct. Plaintiff's position is he had been forced back to work prematurely by the Defendant and he was driving under strong medications that caused him to pass out and sleep intensely. (See Plaintiff attached exhibit 18 to show the Court was again led down a false trail) with special attention directed to second paragraph which states "I called Pam at H-Area Medical and she stated Chris was in fact taking some medication that would cause him to get sleepy, but she would not tell me what it was". The Plaintiff objects to this Court's biased position and the defendant's position relevant to (56 Defendant's Motion for Summary Judgment [40-1] at Tab33, p.1) In review of the Defendant's

reference, the document should show the Court that this committee decisions was based on the Plaintiff's accusers and that being a biased committee with one sided standards that the plaintiff was in violation.(See bias committee, exhibit 39) Take note that the following WSRC management staff, medical, and HR were on the committee: Ralph Thigpen, Steve Williams, Dave Olson, Warren Seaborn, Dr. Botnick, Leroy Myrick, Sam Thorpe, and Lorrie Lot, and Sharon Henderson. The deposition of the level 2 manager, Dave Olson, testified under oath that this committee is supposed to be the Site Discipline Review Board for consistency so that it's not based on management preference but as an impartial board that makes the call. (See Plaintiff's exhibit attachments 19 and 20). Interesting¶ to this case is:1) the committee demonstrates biased behaviors 2) Olson deposition on 11/12/2003, page 22, at line item 8 through 25 wholly contradicts what he testified to the Court as to the makeup of the board,3) the appointed magistracy Judge appears to believe, the false material presented to him be Defendant. The Plaintiff objects to (57 Facts at ¶ 31) to the extent that the probation was not warranted, and that the probation was driven by a committee consisting of supervision and staff doctor that had personal animuses against the Plaintiff (Botnick and Thigpen), and that the rules for establishing such a committee were also breached in according to the deposition of Olson taken on 11/12/2003, pgs 22 and 23. The Plaintiff objects to this Court having a biased position relevant to (58 Defendant Motion for Summary Judgment [40-1] at Tab 33,p.3). The Plaintiff guides the Court to the Plaintiff's SAPR<sup>1</sup> filled on February 4, 2004, pgs 10, at "addressing the probationary contact, through pages 11, 12, and 13, ending at third paragraph WSRC documented about the Plaintiff". The Plaintiff objects to dates regarding (61 Facts at ¶34). See Defendant's Tab 34, exhibit 34 which clearly shows the request was on Friday night August 24, 2004. The second untruth is the Plaintiff did receive approval, but now the Defendant alleges it was unexcused. To show the cowardness

of this company's management, Plaintiff's son has had a medical condition that required the Plaintiff's attention relevant to taken a leave of absence. Plaintiff's son medical condition was documented as such and even though Olson did not approve the Plaintiff's request for (FMLA). However, he did state that leave would be on an **intermittent Basis**. (See Plaintiff exhibit 353 attachment) (See Plaintiff's exhibit 258A, item 03 statement that shows the Plaintiff's son was hospitalized during this asthma episode from 08/24/01 to 08/24/01, and see (SAPR' filed on 02/04/2004, pg 13 at bottom paragraph to pg 15 toward the beginning of second paragraph at public policies) Nevertheless, the Defendant falsely reported under the pretense the Plaintiff was committing a continued abuse of the Defendant's policy regarding attendance which is wholly false. The Plaintiff's Attendance Warehouse Record contradicts the Defendant's allegations. The Plaintiff objects to (62 Facts at ¶ 35) the date content of the Warehouse Record. The attached Plaintiff's document, exhibit 21 and 22, shows on 8/24/01 the Plaintiff worked 12.5 hours and on 8/24/01 the Plaintiff worked 11.0 hours. However, the Defendant has convinced this Court that the Plaintiff was late for no apparent reason on (8/26/2001), and then called in the next day (08/27/01) to request off again for additional 2 or 3 more days which days which again is wholly untrue. The Plaintiff objects to this Court biased position relevant to (63 Defendant's Motion For Summary Judgment [40-1] at Tab1, Plaintiff's Dep. at p.129) The Court has unfairly cropped out or cut bits and parts of the Plaintiff deposition sentence to unjustly support the Defendant's theory. With all due respect and fairness, this Court should justify And include the whole paragraph deposition of Plaintiff's Deposition taken on October 22, 2003 and the statement regarding telling certain managers of work related absences in entirety. (See Deposition of the Plaintiff pgs starting at 111, 129, 130, 131 to sow that it's more than what this Court has presented). With respect to the 5B manual, procedure 2.24, the Plaintiff still holds his position that a department can not adopt a specific



policy for one individual (Plaintiff) as it relates to an established approved site policy for notifications or report for absences without adopting it across the board for all subordinates for consistency and to protect the contract interest delegated by DOE. Additionally to create such a one on one guide, or rule or policy relevant to the 5B manual violates the directive DE-Ac 09-96Sr18500 from DOE as it relates to fairness for all WSRC employees. (See Plaintiff's exhibit 12, procedure 2.24 pg 3 of 23 and pg 13 of 23 both shows the employees are responsible for reporting any injury or illness prompt to management (general) or the employee or designee, if employee is too incapacitated to report to work including the reason for, and expected duration of the absences.

(See Plaintiff exhibit 5)

The Plaintiff states that all of the conditions and requirements were met on his behalf and that the Defendant breached their obligation to comply with their own handbook policies relevant to the 5B manual procedures 2.12 and 2.24 and the inappropriate probation contact regarding a specific persons or managers as it relates to policy. Any other addition to B governing condition for reporting absences would have violated policy. (See first the inappropriate probationary contact conditions as Plaintiff's attachments exhibits 182 and 183), (see secondly Plaintiff's attachments exhibits 24 and 42 which were a part of Book 2 references), (finally see 5B manual procedures 2.24 pgs 3 of 23 and 13 of 23 and from procedure 2.12, pgs 3 of 17, 14 of 17, 15 of 17 and 16 of 17). The Contract requires the Defendant to obtain approval from DOE to change any parts of the 5B manual. (See Plaintiff's attachment exhibits 29 and 30). The Plaintiff states that he in fact did make notification to Defendant's management according to the 5 B manual and even to a designee (Bruce Cain), the message on 8/26/01 was given directly to the supervisor on duty (Chuck Oerman) and to the manager on duty (David Nason) at 2:30 pm. (See Plaintiff's

attachment exhibit 22). This satisfied all conditions relevant to the 5B manual procedures 2.24 and 2.12. The major problem existed when Thigpen's personal animus became involved. Thigpen reported untruths to the Plaintiff's management out of his own personal animus and dislike toward Lawrence. The Plaintiff objects to (64 Facts at ¶¶ 36, 37, and 38) due to the Plaintiff has knowledge of the 5B manual procedures 2.12 and 2.24 and the conditions for requesting an absence and relied upon those facts from the Defendant's handbook. The Plaintiff testified under oath that Thigpen want him to call him at his home to discuss the Plaintiff's absence. The Plaintiff told Thigpen directly that it is not stated anywhere in the company policies to call a supervisor or manager at their home reporting an absence. Thigpen personal animus erupted and came out and he started ignorantly yelling which the Plaintiff yelled back and asked if he was a dumb as or what? This is the typical behavior that has been documented by WSRC employees regarding Thigpen's behavior. This Court has not appropriately reviewed the numerous logged facts of Thigpen's chronic behavior. His behavior was the driving mechanism and motive to which the Plaintiff's termination from WSRC stemmed. Thigpen was questioned in detail during his deposition taken on 11/12/03 and he admitted to having issues as the Plaintiff presented these issues in his July 1, 2004 memorandum in opposition to the Defendant's second brief. (See again the Plaintiff's PMODSS<sup>1</sup> reference regarding Thigpen who is not a person to believe given that he was untrue with his wife having an extra marital relation while working at WSRC). (He was shown to be untruthful during a lockout procedure which he was disciplined for). (He was alleged to have been caught on the site (WSRC) by WSI Security in having sex in an area known as the Blister) (He was documented as being habitual violator of the Defendant's Code of Conduct) (He made several threatening actions against an employee in Radcon and the employee supervisor)

Thigpen cursed all of his immediate managers and was known to be intimidating, abusive, and having a nasty profane mouth in his disposition toward the defendant's subordinates and management). The Defendant Counsel in the discovery phase blatantly lied in their September 12, 2003 responses to Plaintiff's requests stating that "the only complaints contained in Mr. Thigpen's file were those sent by Lawrence. Neither Employee Concerns nor the EEO groups have records of other complaints (see Plaintiff's exhibit 23) which was simply a bold face lie. Thigpen's employee file is littered with behavior problems <sup>2</sup>.

<sup>2</sup> See the following references regarding Thigpen's very bad behaviors:

- 1) The Plaintiff's SAPR filed 02/04/04, pages 19 and 20 at top paragraph
- 2) Reggie Forrest affidavit filed on 02/04/04, at Tab 76 of Plaintiff's Book 3
- 3) Daisy Graham affidavit file on April 9, 2004 in Plaintiff's Citation Request
- 4) Documented statements from Manager and employees, Tab 2 Book 1 plaintiff's exhibits 5-8, 12-15, the Court P1 exhibit, the Court P3 exhibit, Plaintiff's 18 and 20, the Court P2 exhibit, and Plaintiff's exhibits 22 through 34.
- 5) Plaintiff's Memorandum in Opposition to Defendant's Second Summary, filed July 1, 2004, pages 6, 7, 8, 9, and 10 taken directly from Thigpen's Deposition on 11/12/03
- 6) Radcon event with Steve Oppenheimer on 5/16/00. (See plaintiff's attached Court exhibit P2

Regarding calling Thigpen at home (See Defendant's tab 28, exhibit 28, Thigpen's notations on 9/11/01 and 9/12/01). All three noted statements above show he wanted the Plaintiff to call him at his home directly. His notes are consistent with the Plaintiff's statement to the Court regarding Thigpen and becoming belligerently ignorant when the Plaintiff corrected him referencing WSRC policy from the 5B manual procedures 2.12 and 2.24. The Plaintiff objects to (67 Facts at ¶39) to the extent that the termination was not warranted, was illegal, and violated the 5B manual Procedures, 5Q procedure, 8Q procedure, DOE contract directives ES & H requirements. Plaintiff showed the Court



earlier that his probation was a staged method driven by personal animuses of Botnick and Thigpen with others like Bill Soloko, Dave Olson, Warren Seaborn, Steve Williams, and Robert Moody contributing personal attacks directed against the Plaintiff relating the entire Plaintiff's absences in connection to the Plaintiff relating the entire Plaintiff's absences in connection to the Plaintiff's personal business. The termination process was a preclusion stemming from the staged inappropriate probationary contact.

(See Plaintiff SAPR<sup>1</sup> filed on 02/04/04, pgs 20-26 ending at "been established"),

(See Plaintiff's PMODSS<sup>1</sup> filed July 1, 2004, pgs 11, 12, 13, 14, 15, and 16 ending at "were met"),

(See Plaintiff's attached exhibits 42 and 43)

The Plaintiff objects to the Court's biased position relevant to (See Defendant's Responses to Local Rule 26.03 interrogatories at ¶ 1.[9-1])

This Court has not shown documented evidence to support that the Plaintiff's absences evidence to support that the Plaintiff's absences during the years of 2000 and 2001 were out of line with the 5B manual. The Plaintiff's Warehouse Attendance records shows a conflict to what was made up and altered versus what the Plaintiff was paid and worked for. Certainly, it can not be both ways. Either the Attendance Records are wrong or the alleged made up documents are after the fact, altered, or simply wrong. (See Plaintiff's attachments exhibit 1 for attendance record) The Plaintiff further objects to the Judge usurping a question for the jury. There are conflicting arguments that only a jury can select what pieces of evidence from the Plaintiff and Defendant which are relevant to establishing the truth and or the Material of fact. The Plaintiff argues against the Court's stated position regarding the specifics relating to attendance. (See Plaintiff's attached exhibits 25 and 26 that shows no references to attendance, excessive absenteeism, failure to follow policies, or any other untruths stated therein). It appears to the Plaintiff that this Court has predetermined not to fairly divide the truth and has

moved to be an advocate for the Defendant's party. Moreover, it was not the Defendant who drafted these untruths in his final second Summary Judgment position to the Court, but it was the Judge. If the Defendant abandons most of his untrue position, it is not up to the Court to resubmit those points that were abandoned. See Defendant's second Summary versus the Judge aiding the weak memorandum submitted by the Defendant filed on June 24, 2004 as Plaintiff's exhibit 27) The Plaintiff objects to yet another untruth that this Court has chosen to include in the (R&R<sup>1</sup>) which the Defendant abandoned during his second summary regarding note: 69 It appears that the Court, Lott, and Thompson have collaborated to manipulate the proper and true facts to their advantage regarding this specific case. (See Plaintiff's attachment exhibits 25, 26, and 365 to show correct dates). It is very important that special attention be taken relevant to dates because the Plaintiff was terminated while on scheduled shift days off with no advance notice. This violates the 5B, 8Q, and 5Q manuals from an obligation and ministration point. It makes a difference if whether the violations are from nonperformance thereof, there was an obligation breached that the Plaintiff relied upon the Defendant to follow his procedures he unilaterally couch in his handbook to protect his interest in complying with DOE Contract. The Court has been misguided in the effective date of the unjust termination. Plaintiff termination was effective 9/1/01 upon receiving approved notice from WSRC medical for disability relevant to 8/26/01, 8/27/01, and 8/31/01. (See medical approval as Plaintiff's attachment exhibit 28 and more specified on exhibit 40 at entry 9/01/01)(See also Plaintiff's PMODSS<sup>1</sup> filed on July 1, 2004, pgs 14, 15, and 16 up to were met). The another important point that this Court has not considered is if the Plaintiff's absences on 08/26/01, 08/27/01 and 08/31/01 was approved by WSRC medical, what are the grounds of non compliance

if the WSRC department who responsibility is to approve or disapprove medical cases for non occupational illnesses. Certainly, the Plaintiff's management in according to 5B manual, procedure 2.24, rev.6, page 13 of 23, management performs requests approvals from Medical to pay disability benefits. The fact that the Plaintiff's disability was paid (exhibit 28 and 40) shows the absences were approved and met the procedure 5B requirements. The Plaintiff objects to this Court position relevant to (71 Facts at 46-47) to the extent that procedure 2.9 is not an internal policy but a site policy incorporated and approved by DOE that is a part of the 5B manual. The Plaintiff objects to (78 Fact at ¶ 49) to the extent that the relying and performance of the contract required the Defendant to staff and maintain a stable work force which in term from the writing therein created the Plaintiff out of those conditions as a third party entitled to the obligation of performance and acceptance in the employer (Defendant) and employee (Plaintiff) relationship. (See Plaintiff's attachment exhibit 29 and 30) In addressing the Courts "Standard for Determination a Motion for Summary Judgment" the Plaintiff states with absolute facts that the responses given to the Court have supported in the documents of references. The issue is if the Court has thoroughly reviewed the critical evidence from the sets of material facts presented and opposed. The Plaintiff named several errors and untruths in the Court's (R&R<sup>1</sup>). These errors were set out in the form of objections then supported by references of material facts. The crucial ness of such errors, false statements, presenting partial statements, and non compliance with the 5B manual with other relevant policies and DOE contract makes right Plaintiff's fact patterns that wholly contradicts the Court's and Defendant's position of granting a summary of Judgment. In addressing the Court's analysis, the Plaintiff objects to the characterization in the introductory paragraph of Section VI ANALYSIS to the "Procedure Manual 5B Human Resources Policies, Practices and Procedures"(the 5B Manual) as the only written document



which embodies the terms and conditions of the employment agreement between the parties. Defendant contends that there is no written document which modifies the "at will" status of the employment relationship between Plaintiff and Defendant; Plaintiff contends that the 5B Manual, the DOE Agreement with WSRC and other parts of the WSRC Operation and Procedures Manuals are part of the employment relationship by reason of the fact that the Savannah River Site is a nuclear facility highly regulated for the protection of both the workers and the public. Plaintiff contends that he is entitled to get a jury on the question of what documents are relevant to the employment relationship. Also the Plaintiff contends how can there be a true analysis when the material fact presented by the Defendant is false and tainted with deception. The Court can construct a false analysis which essentially has happened. The Plaintiff object to the Court's biased position relevant to note (82). The Plaintiff clarifies that the words direct refers to the termination procedure 2.9. The indirect policies were other parts of the 5B manual that the Plaintiff's discussed relevant to 5B (2.24, 2.12, 3.3, 2.16 and 2.7). The important point is the Plaintiff received discovery information past his deposition date. The Plaintiff object to the Court's biased position regarding "whether the Defendant's procedure manual creates an employment contract". The South Carolina Court of Appeals, in *Baril v. Aiken Regional Medical Center*, 352 S.C. 271, 573 S.E. 2d 830 (2002), reversed a lower court's entry of Summary Judgment on a fact pattern similar to the one in this case. Defendant Medical Center had published a handbook which it contended was not part of the employment relationship because of numerous disclaimers and Statements within the handbook. Plaintiff Baril contended that the handbook, as well as certain practices of the defendant, was part of the employment relationship. In reversing the summary judgment, the South Carolina Court stated:

"Summary judgment is not appropriate where the facts of the case is desirable to clarify the law....

Even when there is no dispute as to evidentiary facts, but only as to the conclusions or to be drawn from them, summary judgment should be denied. Moreover, summary judgment is a drastic remedy which should be cautiously invoked so no person will be deprived of trial of the disputed factual issues. (Emphasis supplied) (citations omitted)"

Plaintiff objects to this Court reaching conclusions and inferences regarding genuine issues of material facts especially when the record shows strong disagreement between the parties with regard to the facts (which documents and practices are part of the employment agreement) and with regard to the conclusions and inferences to be drawn from those facts. Plaintiff objects to this Court's statement of South Carolina law as expressed in *Small v Spring Industries*, 388 S.E. 2d 808 (S.C.1990)(*Small II*); the Court failed to fully state the holding of the South Carolina Supreme Court:

The termination of an at-will employee normally does not give rise to (a) cause of action for breach of contract (citation omitted). However, in certain limited situations, and employer's discharge of an at-will employee may give rise to cause of action for wrongful discharge such as where the at-will status of the employee is altered by the terms of an employee handbook. **Small v Spring Industries, 292 S.C. 481, 357 S.E. 2d 452 (1987) Small I.** *Small I* and its progeny have defined the conditions under which South Carolina recognizes contracts of employment; and, these cases, because so many of them have involved the reversal of summary judgments granted to employer defendants by lower Courts have outlined the procedural road to follow. **See Small I; Small II; Miller v. Schmid Laboratories, Inc., 414 S.E.2d 127 (S.C. 1992); Kumpf v. United Telephone Company of the Carolinas, 429 S.E.2d 869 (S.C App. 1993); Jones v. General Electric Company, 503 S.E. 2d 173 (S.C. App. 1998); Prescott v Farmers Telephone Cooperative, Inc. 516 S.E. 2d 923 (S.C. 1999); Williams v. Riedman, 529 S.E. 2d**

28 (S.C. App 2000); Conner v City of Forest Acres, 560 S.E. 2d 606 (S.C. 2002); Baril v. Aiken Regional Medical Center, 573 S.E. 2d 830 (S.C.) App. 2002). As stated by the Baril Court, *supra*, it would be the exception where a motion for summary judgment would be granted on any issues related to the relevance of a handbook or the conclusions or inferences to be drawn there from. Under South Carolina law, all such questions are for the jury. Plaintiff objects to this Court's characterization of the holding in *Small I* with regard to an employee's reliance on particular language in a unilateral contract. *Small, supra, 357 S.E. 2d 452, 454*. A unilateral contract is formed when one party makes an offer (the handbook) and the other party, undertakes to perform the act (working) on which the offer was predicated. *See Prescott, supra, at 926*. By its very nature a unilateral contract is construed against the offering party (WSRC) because they control the process. Plaintiff's action (working) was sufficient consideration to make the promise (the handbook) binding. As the *Small* court went on to say, there are "strong equitable and social policy reasons mitigating against allowing employers to promulgate misleading personnel manuals while reserving the right to deviate from them at their own price (citation omitted) *Small, Supra, at 454*. The Court's discussion of particular provisions of the 5B Manual is an attempt to substitute the Court's interpretation for the jury's interpretation, a position specifically condemned in *Jones v. General Electric, supra; Williams v Riedman, supra, at 32; and, Conner v city of Forest Acres, supra, at 611*. In *Conner*, the Plaintiff was terminated after being reprimanded numerous times over a 12 month period for dress code violations, tardiness, poor work performance, leaving work without permission and using abusive language. The Court of Appeals had reversed the trial Court's Summary Judgment on both breach of contract and bad faith discharge claims. In affirming the Court of Appeals reversal, the Supreme Court of South Carolina affirmed that it is the province of the jury to determine the existence and interpretation of a written



agreement (the handbook) in light of the facts of a particular case. Conner, supra at 610. This Court's reliance on Prescott, supra, is misplaced since the Prescott Court based its ruling on oral representations. The handbook in question had been presented "several months" after Prescott started work and footnotes to the record indicate that the handbook was not presented as part of the record on appeal. The Court dealt only with the oral representations and found them to be too vague to consider as a firm offer of employment. In the instant case, Defendant WSRC is bound by its agreement with the federal government to have suitable personnel manuals and to conduct their business in accordance with those manuals.

In every handbook case the South Carolina Supreme Court has said that the interpretation of the handbook language is an issue for the jury. Summary judgments in favor of the defendants in each of the cases cited were reversed and the cases remanded for trial by a jury. Under the circumstances, WSRC's motion for summary Judgment should be denied. Throughout the Plaintiff's actionable cause, he states and references several procedures. The Court is stuck on using the word promise when throughout the Plaintiff's position he relies on **obligation of performance**. This position was held in the Plaintiff's 10/06/03, Amend Rule 26.03 Rules 26(f) Report, pgs 2, 4, and 5, that a contract can exist from the position of obligation. See U.S.-Society of Catholic Church of Lafayette, Inc. vs Interstate Fire & Gas Co., 126 F.3d 727, 47 Fed R. Evid Serv. (LCP) 1406 (5<sup>th</sup> Cir. 1997) citing Larson Construction Co. vs. Oregon Auto Ins Co., 450F 2d 1193, 1971 A.M.c. 2484 (9<sup>th</sup> Cir. 1971). (See DOE contract with WSRC that by the languages therein oscillates around the protected interest of obligation, agreement, and compliances to perform, (See attachment exhibits 29, 30, 41, through 49) Based on the contract to staff WSRC and to have a stable, highly trained work force, the Plaintiff was born from those conditions which entitled the plaintiff to those obligations

agreed by the Defendant. And this was set out in procedures documents, 5B manual and other writings as developed by the Defendant and approved by DOE. (See Plaintiff's SB<sup>i</sup> filed on 05/24/04 that references unilateral contract accepted and described under the circumstances of performance as a worker and obligation from the employer, the citing from Small v Springs, Miller vs Schmid Laboratories, Kumpf vs. United Telephone, and Williams vs. Riedman. See Plaintiff's PRDR on 02/29/04, pgs 1-20, ending at 1<sup>st</sup> paragraph wording "statues". See Plaintiff's attachment exhibits 65 and 50 to show parameters to condition of employment. The Plaintiff objects to the Court's one sided stand against the Plaintiff relevant to promises and must be aware of statement under note 83. While the court wishes to conclude forbearance in reliance in Small v Spring's in the writing in the 5B manual 2.7, pages 3-10 implies a step system of progression toward termination. The 2.7 procedure on page on page 3 of 11 states "management should take corrective, rather than punitive, action" when a employee's performance is unsatisfactory. Plaintiff contends that during the years of 2000 and 2001, he did not meet any unsatisfactory conditions applicable to a corrective action. Another signed document that restricts is the Rules of conduct. The other policy restricts the employee from termination at will is that the the president or a designee has to approve termination of any employee. The Plaintiff contends that the president or designee did not approve the illegal termination. (It is not enough for the Court to cling to one part of South Carolina Law when the other condition supports both Parts. South Carolina Court has not specifically held that the awareness is required to file a lawsuit for unjustly termination as in the case; Small v Springs Industries, however all policies created from the 5B Manual are required that employees be familiar with the requirements (See pg 2 of procedures 2.7, 3.6, 2.24, 2.9, 2.12, and 3.13). The contract established by the Defendant implies through the Rules of Conduct and by Procedure 3.3, that a conditional violation must occur in order to be subject to any contacts. WSRC just

could not walk up to an employee and give them a corrective contact on the basis of an at will status.

Conditions must be met to receive the contact and the Plaintiff argues that his conditions were not met but is a result of Botnick's and Thigpen's personal animus against the Plaintiff. The Plaintiff objects to the Court's position regarding **"B" breach of contract note 84**. The Court's analysis of plaintiff's statements in his deposition may go to the weight a jury might give his testimony but whether a contract was breached is a question of law to be presented in a jury instruction once the jury has determined the elements of the employment contract and the conclusions and inferences have been drawn from both parties. Plaintiff expressly objects to the Court's analysis of the Policy 2.9 violation, omission of the exit interview and the approval (or lack thereof) of plaintiff's dismissal by the company president. The Plaintiff also stated other policies in his deposition that had not been presented to the Court. The Plaintiff's initial cause clearly states the 5B manual policies. (See Plaintiff's Complaint at Law, filed 01/14/03, File No. 2003-CP-02-45) Plaintiff contends that his termination was the result of animus directed by certain WSRC employees. The theory of the case is built around the idea that the termination policies and discipline procedures were part of a ruse to cover the true intentions of these employees. The theory of the case is built around the idea that the termination policies and discipline procedures were part of a ruse to cover the true intentions of these employees. See Baril, supra, for a similar fact pattern. Certain WSRC employees (Thigpen's statement in his first meeting with the Plaintiff that "I (Thigpen) will break you"; entries in the medical records regarding Plaintiff's outside business activities) show a dislike for the Plaintiff that became a driving force in his termination. Company policies and practices provided for a certain termination process; this process; was well publicized to federal agencies as a way to show the government that their multibillion-dollar contract with WSRC was well deserved. Plaintiff is entitled to



introduce evidence on these issues for a jury's evaluation. Plaintiff objects to the Court considering any of the "other policies" as each of these elements is for consideration by the jury as part of the case in chief. The Defendant cropped out the other references applicable to other procedures during the Plaintiff's deposition. (Pgs 107-110, 112-128, 140-146, 148-ending). This was done specifically to present only the defendant's one sided story. (See Defendant's tab 1 dep. of Plaintiff, pgs 138 and 139 ending at line item 1). Breach of obligation is truthfully stated rather the Court's position regarding note 85. The Plaintiff objects to the false statement made by the Judge regarding note 85. (That is not what the Plaintiff stated on page 139 in his deposition. The Court's position is speculation. Regarding breach of obligation, the Judge has again stated an error in his note 86. (See Plaintiff's PMODSS<sup>1</sup> filed on 07/01/04, page 16, 1<sup>st</sup> para.). Advance notice is not as the Judge describes. (See Plaintiff's attachment exhibit 51 and 52, pg 7 of 11), Plaintiff was terminated while on his scheduled shift days off. When the Plaintiff returned from approved disability (exhibit 40) he was terminated without any warnings. 5B manual states and implies that the reasons for discharge are from that specific list. The Plaintiff's background material facts to present do not fit and restricts the Defendant from executing at will their discharge. The Plaintiff did not meet the condition for an improper discharge. (See Plaintiff's PMODSS<sup>1</sup> pg. 14 and 15) The Plaintiff objects to the Court comparing his case to Prescott and note 89. The DOE contract makes no distinction between administration processes because the contract only deals with obligation of compliance to perform. Anything less would violate the DOE directives thus breaching an obligation to the Plaintiff. (See Plaintiff's attachment exhibit 53 all pgs, exhibits 29, 30, 41, 42, 43, 44, 45, 46, 47, 48, and 49), regarding the word "promise" and in review of both the DOE contract and 5B manual, 8Q manual, and 5Q manual, they speak from the languages to ensure, compliance, and obligation which is the only means by which

this case can be ripened for any forward movement. The Plaintiff objects to the Court's false statement of the Plaintiff "not afforded the exit interview as promised". Nowhere in the Plaintiff's claims or documents provided to the Court where he ever mentioned his position from a promise. However, the position was stated solely from an obligation to comply and protection of the Defendant's interest with DOE to perform as directed from the contract to the 5B manual and other relevant policies established by the Defendant. The Plaintiff objects to the Court's biased position regarding note 90. The Plaintiff contends HR was not involved as 2.9, 5B, manual, pg 3 of 11 requires. Tommy Woods and Thigpen carried out Dave Olson's instruction to terminate the Plaintiff illegally. Even if the Plaintiff would have had an exit interview, it was after the act of wrongful termination. The Plaintiff contends that the affidavit of Lorrie is indeed untruthful that goes directly against Dave Olson's dep. of the approval coming from the president office and the dates were not properly stated. (See Plaintiff's attached exhibit 54 and the Plaintiff's phone record, talking to Olson without ever being notified that he had terminated the Plaintiff 2 days prior. Dave Amerine is the Defendant's V.P., Olson stated the termination approval was given from the President's office. If the effective date is 08/31/01, how then did the Plaintiff receive a medical disability approval on 09/01/01? (See Plaintiff's attached exhibit 40). The Plaintiff was not aware of the termination. Regarding the Court's misguided position, the Plaintiff objects to notes 95 and 96. The Court cannot show per wording specifically the Plaintiff testified in the manner that he has falsely presented. (See Defendant's tab 1, Plaintiff's dep. at pp. 132-139). The Plaintiff contends that the Defendant has been guilty of presenting two conflicting versions. Regarding the Rules of Conduct, it's reasonable to see that these Rules were a part of the Plaintiff's condition of employment and incorporated into the 2.9 termination procedure as a condition to not be terminated by. (See pg 5 of 11, 2.9 procedure) (See also Exhibit 65). Regarding the Court's misguided position of

note 98, the contract between DOE and WSRC from and the established approved 5B manual requirements go indirectly proportional to the Judge's statement. (See attached exhibit 41, 42, 43, 44, 45, and 46) The Plaintiff's position holds for the Court note 100, 102, 103, 104, 105. Based on the personal animuses of Botnick and Thigpen, (see affidavit from Reggie Forrest and Arthur Prater at Plaintiff's book 3, tab 76, in Plaintiff's SAPR<sup>1</sup>) (See Daisy Graham's affidavit filed on 04/09/04 Plaintiff's Citation of Request)(See Plaintiff's SAPR<sup>1</sup> pg 1-21 at "revision 6, 06/18/01"). Also the Plaintiff pointed out the facts from his Warehouse attendance record which shows a complete opposite of what the Defendant untruthfully states. (See again Plaintiff's attachment Exhibit 1) The Plaintiff objects to the Court's position regarding retaliation and applies all previously mentioned references that support WSRC management participated in Botnick and Thigpen's personal animus. (Plaintiff's PMODSS<sup>1</sup> pgs 4-11) **In Conner v City of Forest Acres, supra**, the Plaintiff was reprimanded for conduct similar to the conduct described by the record in the case now before the Court. The City of Forest Acres had argued to the trial Court that even if the contract (of employment) existed, "it did not breach the contract because it followed the procedures outlined in the handbook. The Court of Appeal found that because Conner disputes the City's version of the events resulting in her reprimands and subsequent termination, summary judgment was not proper on the issue of whether Conner was fired for cause "Conner v City of Forest Acres, supra, at 611". As in **Conner**, Plaintiff disagrees with the characterization of events as put forth by Defendant. In Plaintiff's theory of the case, the decision to terminate him was made for reasons unrelated to his work performance and then managers familiar with the 'system' used that familiarity to manipulate the process and terminate him. The Court characterizes this claim as a retaliation claim which is not what Plaintiff argues: he does not assert that he was fired because of his race or because he was a 'whistleblower' or because he was engaging



in some particular activity (i.e. union activity). Plaintiff argues that supervisory personnel manipulated the system to terminate him because they didn't like him because he was a successful black man who was self confident and assertive. Thigpen wanted to break him and Botnick wanted his business to fail. Plaintiff was not the greatest employee within the company, but he was a long term employee with a high performance service record that had been acceptable for over 15 years. WSRC had told the government and they had told their employees that we will respect you and treat you like the highly skilled work force we want you to be. Then they violated their own rules to terminate him and they did it for personal reasons. **Plaintiff Lawrence is entitled to get to a jury on his theory.** The Plaintiff objects to the Court's biased position regarding notes 106, 107, 108, 109). Notes referencing 107 through 109 was not part of any document served upon the Plaintiff. However, Plaintiff does not disagree with the Court's general statement of South Carolina law as it relates to damages and the mitigation question. Plaintiff does object to the Court making this determination on a Summary Judgment motion. The record is replete with job applications, notes regarding interviews and job histories. A trier of fact may well conclude that Plaintiff did not do all he could to mitigate his damages but a trier of fact may conclude that he did the best he could under the circumstances. Defendant will have an ample opportunity to challenge Plaintiff before the jury and the Deposition testimony to which the Court made specific reference may influence a jury's decision. But, Plaintiff is entitled to get a jury on the issue. The record contains more than a scintilla of evidence which is the standard which should be used to justify any verdict. See Jones, supra, at 177; Small II, at 811. For the Judge to have referenced these documents appears to the Plaintiff that this case has been secretly staged or counsel for the Defendant has given the Judge material in violation of Federal of Civil Procedure. In addressing further this violation, for the Judge To participate in this violation and a violation of the Briefing

order, (the Court will address only the facts stated in the Briefing Order) is a position of unfairness and this Judge should recuse from any further interference. Review the Court hearing on 06/14/04. In addressing note 106, the Plaintiff objects and contends his employment job history in indicates a different picture. The Defendant abandons this part of his defense in the second Summary for judgment filed about 06/24/04. (See Defendant's Second Summary). For the untruthful deceptive acts Concentrated by this Court acting as an advocate towards the Defendant and because the Defendant has presented false Material to the Court, the Plaintiff invokes all jurisdictional Appendages to ask the Judge to recuse himself from further Involvement and that the Defendant's Motion be denied and Set forth before trial by jury.

Sincerely submitted

s/ Christopher Lawrence  
Christopher Lawrence

This 4<sup>th</sup> day of August

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH  
CAROLINA**

**AIKEN DIVISION**

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**CHRISTOPHER LAWRENCE**

**PLAINTIFF**

**vs.**

**FILE NO 1:03-484-27BG**

**WESTINGHOUSE SAVANNAH RIVER**

**COMPANY LLC.**

**DEFENDANT,**

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**CAUSE**

**CERTIFICATE OF SERVICE**

This is to certify that I have date served a copy of the Plaintiff's Memorandum of Objections to the Magistrate Judge's Report of Recommendation.

To: Larry Propes

Clerk of Court  
United States District Court  
85 Broad Street  
Charleston, South Carolina 29401



From: Christopher Lawrence  
Pro Se  
2740 Highpoint Rd.  
Snellville, Ga 30078  
(678) 344 4518

By depositing a copy of the same by way of Federal  
Express Courier Overnight to assure proper prepaid delivery.

This 4<sup>th</sup> day of August 2004

**IN THE UNITED STATES DISTRICT COURT OF  
APPEALS FOR THE FOURTH DISTRICT  
RICHMOND, VIRGINIA**

**CHRISTOPHER LAWRENCE**

Plaintiff,        \

Vs.

**WESTINGHOUSE SAVANNAH RIVER  
COMPANY LLC.  
DEFENDANT,**

**05-1566**

**CA-030484-RBH**

**STATEMENT OF FACTS**

Plaintiff Christopher Lawrence was a fifteen year employee of Defendant Westinghouse Savannah River Company (WSRC). See ¶1 and ¶2 in the attached exhibit M5. WSRC manages a large nuclear facility in South Carolina under a long- term contract with the United States Government's Department of Energy (DOE). See ¶3 and ¶4 in the attached exhibit M5. DOE regulations require that contractors promulgate suitable regulations for their long term employees covering many areas of a plant's operations, safety, and including Human Resources. See ¶5 in the attached exhibit M5. WSRC produced a "5B Policy Manual" describing its personnel policies regarding obligations. See ¶6 in the attached exhibit M5 and see Court transcript on June 14<sup>th</sup> 2004, pg17, items 3 and 4. This manual identified as 5B was approved by DOE. The 5B Manual consists of many sub-parts; (i.e. 2.25, 2.24, 2.12, 3-3, 2.19, 3.15, and 3.6). The

plaintiff referred to these sub-parts throughout his pleading specifically in the August 4<sup>th</sup> 2005 M8A exhibits regarding Objections to the Magistrate's (R&R). The sub-parts that specifically apply to this relevant briefing include the attached Procedure 2.7 (Employment Development and Constructive Discipline Program) and Procedure 2.9 (Termination Practices).

Plaintiff contends that the 5B Manual is a written modification of South Carolina's common law doctrine of "*at-will*" employment and that the provision's of this manual control the employment relationship between Plaintiff and Defendant. Plaintiff had a history of missed work related absences that was approved by WSRC management within the provision of the 5B Manual. See Plaintiff's M8A exhibits identified as part of the documents sent to the Court of Appeals. Within the un-tabbed document, see specifically exhibits 5, 6, and 7 regarding absences that apply.

Pursuant to the provisions in Procedure 2.7, WSRC (inappropriately) put the Plaintiff on probation on September 29, 2000 seven days after the plaintiff had returned to work from a medical disability. See ¶19 and ¶31 in the attached exhibit M5. The probation had certain conditions which Plaintiff was to follow and it included monthly follow-ups to monitor the probation. \* Under Procedure 2.7 rules, if Plaintiff satisfactorily completed his one year probation, he would be removed from probation and would continue in normal work status. Also \* Under Procedure 2.7 rules, the Defendant violated the policy regarding informal meetings and discussions and applied the Plaintiff's old contacts from the years of 1989 through 2000 in the Defendant's tab positions exhibits regarding their motion for Summary filed on January 5, 2004. See the Defendant's Tabs regarding old contacts at Tab 3-11. Also under Procedure 2.7 rules, the Procedure prohibited the Defendant from using Informative contact as apart of constructive discipline. However, the Defendant included the Plaintiff's old informative contacts as apart of the disciplinary process in violation of Procedure 2.7. See

Defendant's Tabs 21 and 25. See Plaintiff's M8A exhibits filed on August 4<sup>th</sup> 2004 that was sent to the Court of Appeal with enclosed exhibits 2 and 8 as part of the 2.7 procedure. Because the M8A exhibit is un-tabbed, the Plaintiff has provided a copy of 2.7 Procedure as attached exhibit L52A and a copy of 2.9 Procedure as attached exhibit 52. Eleven months later, after ten satisfactory probation follow up contacts or reports, WSRC terminated the Plaintiff. Upon the filing, pg 10, of the Plaintiff's Brief Statement of Disputed Facts the Plaintiff discussed .28(c), which stated that "the conditions were continuously met regarding inappropriate probationary contacts." This was again mentioned in the Plaintiff's Memorandum in Opposition to Defendant's second Motion for Summary of Judgment on July 1, 2004, reference pg. 14. To clarify this element of factual evidence which shows the Plaintiff continuously met the probationary conditions see the following attachments; WSRC-LAWR549, WSRC-LAWR575, WSRC-LAWR601, WSRC-LAWR607, WSRC-LAWR608, WSRC-LAWR612, WSRC-LAWR618, WSRC-LAWR623, WSRC-LAWR643, WSRC-LAWR650. The Plaintiff contends that termination of his employment with WSRC was a direct result of *personal animus* which was directed towards Plaintiff because of his racial ethnicity, and his clothing business, by an array of WSRC white management personnel. The record contains numerous documents which refer to his clothing business, refer to example 1, attachment exhibit M5, ¶17.

**The Plaintiff contends that his termination was in violation of the Procedure 2.7, and 2.9 (obligation of compliance) provisions. The Defendant recited into the Court record that they failed to comply with provision 2.9. See facts; attachment exhibit M5, ¶45, ¶46, and ¶47.**

The Plaintiff contends that the Trial Court improperly granted the Defendant's Motion for Summary of Judgment. The Plaintiff further states with absolute fact that The Trial Court acted in a advocate and partisan role in that the fact finding to interpret their legal conclusion was not proper. The Plaintiff



contends that once a determination has been made that a writing modifies the at will employment relationship. The Trial Court must defer to a jury determination as to the inferences and conclusions to be drawn from the language within the writings. In this specific case the Trial Court confirmed the application of WSRC's 5B Manual procedures and then proceeded to interpret the language in the WSRC Manual and then proceeded to apply it to the Trial Court version of the facts of the case. The Plaintiff contends that South Carolina provides for written modification of the "*at-will*" employment relationship; that the 5B Manual is such a written modification and that the Plaintiff is entitled to get to a jury on his claim of Wrongful Termination and Retaliatory Discharge.

Throughout this present case the Trial Court conducted the Judiciary process in an inappropriate and unethical manner. In the June 14, 2004 hearing the Court allowed the Defendant to recite a document titled exhibit M5 (Statement of Uncontested Fact) into the Court's record.

The Magistrate Judge is not fair and gave conflicting instruction at a motion hearing on June 14, 2004. The Plaintiff and Defendant were required to by the Court Order to develop and present for the record a statement of uncontested facts. The Magistrate required the Defendant counsel to reduce those undisputed facts to writings that was apart of the Courts records and served them upon the Plaintiff and to the Court (*See attached Court Transcript 6/14/04 pgs6-8*). Because there is damaging evidence within the undisputed Statement of facts admitted to the Court relevant to Animus's of Dr Botnick, the Defendant Counsel, a seasoned employment Law Specialist changed what became a part of the Court's record for undisputed facts. (*See first attached Court Transcript 6/14/04 pgs11-17*), (*See secondly the attached M5 exhibit*)

When the Plaintiff revealed this violation, the Court excused the blatant violation as "*inadvertently used the incorrect word and in fact the word should be negative*". (*see exhibit M8,*

*Tab 10 of the Plaintiff's Objection) and (see M7 tab 9, pg. 8 of 30, bottom foot note of the Magistrate's (R&R)).* The Counsel for the Defendant specifically told the Court that Botnick's documented notes were negative but tried to change the word "**negative**" to "**skeptical**" for the sole purpose of diminishing the content and meaning of the animus demonstrated against the Plaintiff.

Throughout the Statement of Uncontested Facts the Defendant's counsel changed the wording and phrase statements of record to diminish the Defendant's wrongful actions.

**Examples 1** of the changes to the Statement of Uncontested Facts are: counsel for defendant cited into the Court's record that "By April 2000, Lawrence was warned that unexcused absences would result in discipline, and future absences – I'm sorry, I might have to ask him (plaintiff) did we agree to that or not? Would be limited to genuine emergencies? The plaintiff responded: We agreed to that. *(See attached Court Transcript 6/14/04 pg13, items 8-13)* *The problem with Thompson changing this court record is he omitted this from the Statement of Uncontested Fact (See M5 exhibit). This is one of the most important points of the Plaintiff's case. The Defendant has accused the Plaintiff of being absent throughout their defense, and has mislead the court and reader that all of the Plaintiff's absences were unexcused and not approved. The Defendant counsel makes no clear distinctions if the absences were excused and approved by WSRC policies and management or was the Plaintiff released by WSRC medical or his personal physician.*

**Examples 2** of the changes to Statement of Uncontested Facts are: item 9. The record should be "*In 1998, Lawrence had a medical absence related to a bunionectomy*". *(See attached Court Transcript 6/14/04 pg 12, item 17 and attached exhibit M5)* The Defendant's counsel submitted to



the Plaintiff that the related bunionectomy was an ***employment absence***.

Plaintiff contends the Defendant's counsel changed the word to ***employment absence*** to support his theory of improper allegations of the Plaintiff's employment absences.

**Example 3** of changes to the Statement of Uncontested Facts are: item 11. The record should be ***'The WSRC medical department felt that eight weeks was excessive. However, advised management not to do anything until Lawrence brought in a doctor's note'.*** (See attached Court Transcript 6/14/04 pg 12, line items 19-22, and exhibit M5) The Defendant's counsel changed and submitted the record to the Plaintiff as ***"The WSRC medical department felt that eight weeks was excessive and advised Lawrence to bring in a doctor's note.*** Thompson, Defendant counsel, totally tried to diminish the context of the phrase by leaving out the words advised ***management not to do anything until***. Plaintiff contends the omissions are to diminish the animus's theory of the case.

**Example 4** of the changes to the Statement of Uncontested Facts are: item 16. The record should be ***"When he did return to work Lawrence was excused to go home by the WSRC medical department because he said he was being affected by the medication".*** (See attached Court Transcript 6/14/04 pg13, line items 18-20, and exhibit M5) The defendant counsel omitted ***"by the WSRC Medical Department"*** to further support his theory of the case. What was submitted to the Plaintiff is ***When he did return to work Lawrence was excused to go home because he said he was being affected by medication.***

**Examples 5** of changes to the Statement of Uncontested Facts are: 17. The record should be ***"WSRC management and Dr. Botnick (WSRC doctor) made documented***

***statements concerning that Lawrence's outside business was interfering with his WSRC employment. Dr. Botnick made comments to this affect in Lawrence's medical and employment files", (See attached Court Transcript 6/14/04 pg13, line items 21-25, pg 14, items 1-9, and exhibit M5)***

Defendant counsel again omitted key wording trying to manipulate the meaning and trying to diminish the personal animuses of WSRC management and staff doctor. The Defendant counsel submitted to the Plaintiff that **WSRC management and Dr. Botnick (WSRC doctor) documented that they were concerned that Lawrence's outside business was interfering with his WSRC employment. Dr. Botnick made comments about this in Lawrence's employment and medical files.**

One of the facts involved in this case clearly shows that WSRC's Dr. Botnick had personal animus against the Plaintiff. ***(See Pages 4,5, and 6 of the Plaintiff's Memorandum in Opposition to Defendant's Second Summary, date filed 07/01/04). (See exhibit M8, pages 12 through 14 of the Plaintiff's Memorandum of Objections to the Magistrate's (R&R), date filed 08/04/04). (See also supporting exhibits in M8A) The documents how Dr. Botnick stated "you can say that I'm targeting him (Plaintiff)" 6 to 8 weeks is ridiculous, the company has been had once, can not afford to pay, not paying him want hurt him". (See attached exhibit 126)***

**Example 6 of the changes to the Statement of Uncontested Facts are item: 18. The record should be "Dr. Botnick's position regarding Lawrence's attendance was negative".(See attached Court Transcript 6/14/04 pg 14, line items 10 and 11, and also se exhibit M5).** Knowing that this would effect the Defendant's position relevant to the personal animus's, Mr. Thompson, the Defendant counsel changed the word "**negative**" to "**skeptical**" in attempt to diminish the

context and true meaning of Dr. Botnick's position toward the Plaintiff. Defendant counsel submitted to the Plaintiff that ***Dr. Botnick's position regarding Lawrence's attendance was skeptical.***

**Example 7** of the changes to the Statement of Uncontested Facts are item 49. The record should be "***There is a DOE Order 350.01 that is referred to and is incorporated into the WSRC/DOE contract***". (See attached Court Transcript 6/14/04 pg 17, line items 14-18, and exhibit M5)

**The Defendant's counsel omitted the wording incorporated to remove the theory of contract law.** The Plaintiff contends the word incorporated holds WSRC in obligation by DOE to perform. The Defendant attempts to refer to the DOE Order 350.1 is an attempt to exclude the Order from the WSRC/DOE contract which is a big difference than is acknowledging it being into the contract. The Defendant's counsel submitted to the plaintiff that ***There is a DOE Order 350.1 that is referred to in the WSRC/DOE contract.***

The violations that have occurred are deserving of sanctions and disbarment but the Trial Court turned a deaf ear to Thompson, WSRC counsel that changed throughout the records regarding the Statement of Uncontested Facts that was recited one way into the Court's record but manipulated in another for the purpose of diminishing the case content. It appears to the ***Pro se*** Plaintiff that this type of conduct was demonstrated because the Court Magistrate Judge and the Defendant's counsel understand that the Plaintiff has not been formally trained to practice Law and does not respect (Black) ***Pro Se litigants.***

Another point that shows Magistrate unfairness is during the hearing on June 14, 2004, the Magistrate stated "***if I choose to go forward on the summary judgment and issue a report in***



*recommendation, I want to go forward with an agreed upon statement of facts". Further down in the Magistrate's instructions, he states "only the facts necessary for this Court to determine motion for summary judgment will be included in these statements of undisputed facts. All but irrelevant material will be excluded".*

The *Pro se* Plaintiff contends that the Magistrate Judge went contrary and gave conflicting orders to what he specifically communicated to the parties and the Court. The Magistrate drafted and submitted his report in recommendation which introduced **disputed facts** only from the Defendant's initial summary motion as if the material was true and undisputed by the Plaintiff. The Magistrate Judge switched from the Statement of Uncontested Facts in this case to points that are contested and disputed as a balance sheet for the Defendant's behalf. The [Magistrate Judge] drafted his (R&R) and introduced disputed material from the Defendant's Summary Judgment as if the material was true and undisputed. Review the court's transcript, pg.5, line items 3-25 and pg. 10, line items 12-19 on June 14, 2004 to see that the Magistrate's violated what he communicated to the Court in his instructions. He stated one thing and did the opposite. He stated in the hearing "if I choose to go forward on the summary judgment and issue a report in recommendation Further down in the Magistrate's instructions, he states "only the facts necessary for this Court to determine motion for summary of judgment will be included in these statements of undisputed facts. All but irrelevant material will be excluded". The major problem exists when there are undisputed facts that are changed and then the magistrate switched from what was cited into the record where the determination of the summary was to come from the Statement of Uncontested Facts (See Court transcript, pg.10, line 12-19). Certainly it can not come from allegations and disputed facts or facts that are changed from the record as Thompson did to diminish and support his motion. The

*Magistrate started out in his (R&R) using the Uncontested facts as instructions he cited in the court record, but switched to disputed facts and the Defendant's position of their motion to aid the Defendant imperceptibly second brief on the following pages of the Magistrate's (R&R) : (pg5, ¶ 6),(pg6, ¶13), (pg6, note items 16-20),(pg7, notes 21,22,24-27), pg8, notes 28,31,32), (pg9, notes 38,39,40and 43), (pg10, 44-47, 49 and 53), (pg11, notes 54,56, and 58), (pg12, notes 63 and 68), (pg13, notes, notes 69 and 75), (pg. 15, notes 79 and 80), (pg.16, notes 81 and 82), (pg. 17, note 83), (pg19, note 84), (pg20, notes 85-89), (pg21, note 90), (pg22, notes 91-95), (pg23, notes 96 and 97), (pg.25, notes 100-105), (pg.26, note 106), (pg27, notes 107-109). The Trial Court on page 5, of the Order granting the Defendant their motion tries to excuse the Magistrate's advocate conduct by stating "The plaintiff does not realize the Magistrate Judge could determine that a fact was uncontested despite Lawrence's refusal to include that fact in the statement of uncontested facts if, for example, the fact was admitted by the plaintiff in his deposition". The plaintiff does not realize the Magistrate Judge could determine that a fact was uncontested facts if, for example, the fact that the exhibits which the Magistrate used to base his determination on were **outside** of what his instructions had been regarding what he would rely on for a determination. The Magistrate **can not use** the Defendant's summary points from (40-1) to defend its advocate position. Many of the points that the magistrate uses do not come from the Plaintiff's deposition as the Trial Court tries to mislead the reader in upholding their inappropriate position. The Plaintiff filed a statement of disputed facts against the defendant's Summary. **Therefore, the Defendant's false documents can not be concluded as material of facts by which a legal conclusion is drawn from. The South Carolina Court of Appeals, in Baril v. Aiken Regional Medical Center, 352 S.C.271, 573 S.E. 2d 830 (2002).***

The Magistrate drew a legal conclusion, which was outside the boundaries of where the determination as described in this court transcript was to come from. Material which was to be used had to come from the Statement of Uncontested Facts. The Magistrate and Trial Court ***can not offer conflicting instructions*** by giving instructions and a Court Order to the plaintiff then acting contrary to the Order which had been recited into the Court Record. *(See court Transcript, 6/14/04, pgs 5 -10 and 17 -22)*

The Magistrate did not review the Plaintiff's material presented in defense as the non moving Party. (See Court transcript, pgs 5, 6/14/04) where it was specifically communicated that " We are not going to laboriously cull through". However, the magistrate carefully selected material from the Defendant's first summary motion [40-1] and not from the Defendant's second summary motion [41-1] which is ***totally contrary to*** the instructions from the Court on June 14, 2004.

The Defendant asked the Magistrate to step out from his position of authority into an **advocate role** to select, pick, and choose from the Defendant's summary and disputed material what the Magistrate thinks and feel would look favorably in the eyes of a Federal Court would be necessary for determining in presentation a summary of judgment motion for the Defendant.

The Plaintiff contends that the Magistrate has conspired with Defendant counsel in writing about material that was not served or not a part of the Defendant's pleadings. *(See first the Magistrate's Report of Recommendation as the Plaintiff's exhibit M7). (See secondly the Plaintiff's attached exhibits M8, Memorandum of Objections to the Magistrate Judge Report of Recommendation. Date filed August 4, 2004). (See exhibit M8A as the Plaintiff sub replies to the Defendant's response to the Plaintiff's Objections to the Magistrate's (R&R) at Tab). (See attachment exhibits for the sub replies at for the following: (exhibit 1), (121 and 122), (WSRC-Lawr 680 and WSRC-Lawr 681), (exhibit 326),*



*(exhibit 5), (exhibits 69, 70, 71, 72, 73, 74, 75, 76, 77, pages 15 and 16), (exhibits 12 and 13), (exhibit P2), (exhibit 6, 7, and 8), (exhibit 2), (exhibit 40) and (exhibit 126)*

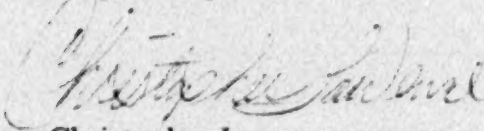
Listed below is the position that the Report of Recommendation drafted by Magistrate Judge George C. Kosko, used against his instructions. The Magistrate draws a legal conclusion to disputed material submitted by the Plaintiff in his responses to the Defendant's summary. The Magistrate concluded the Defendant's first Summary [40 -1] as if the material is truthful and not disputed.

- 1) The Magistrate attempted to substitute his interpretation for a jury question and instruction.
- 2) The Magistrate attempted to eliminate a jury process and instructions.
- 3) The Magistrate attempted to disregard the Plaintiff's case chief and theory. It is shown throughout (R&R) that the Judge aligned himself with the Defendant's position.
- 4) The Magistrate believed false information submitted to him in error by the Defendant.
- 5) The Magistrate attempted to crop out or remove the entire deposition sentences and phrase statements for the purpose of presenting partial truths and to offer supporting material in alliance with the Defendant.
- 6) The Magistrate attempts to state the Plaintiff did not reply on the 5B manual and other documents. Only certain parts of the 5B manual. However, the Plaintiff's initial cause of action speaks entirely and consistently of the 5B manual policies.
- 7) The Magistrate attempted to usurp questions for the jury.
- 8) The Magistrate attempted to include the Defendant's material that was the counsel for the defense abandoned.
- 9) The Magistrate misread and misplaced the case law holding in *Small I. Small, supra, 357 S.E.2d 452, 454.* and *Prescott, supra, at 926.*

- 10) The Magistrate attempts to make untrue statement regarding his note 85. The Magistrate attempts to compare the Prescott holding to the Plaintiff's case.
- 11) The Magistrate attempts to make false statements regarding exit interview.
- 12) The Magistrate attempts to speculate what he believed happed relevant to his not points from 92- 98.
- 13) The Magistrate attempts to reference material that was never ever served upon the Plaintiff by the Defendant. Note 107,108, and 109 was not apart of any document served. (See exhibit M7at Tab9, page 27 of 30 in the Magistrate's (R&R)). How can the Magistrate write about 107,108, and 109 if these positions were never discussed in any of the previous submitted pleadings from the Defendant? The only way for him to write or discuss material that have not been served or filed, or mentioned previously is to conspire with the Defendant counsel secretly. This is indeed a violation of his Office and the Federal Rules of Civil Procedures. (See exhibit M8 at Tab10, page 33of 35)
- 14) The Magistrate contradicted his order on June 14, 2004 that he used the Defendant first Summary [40-1] instead of the Defendant's second summary [41-1] to prepare his recommendation. It is a strange to require the Plaintiff to submit a second brief in response to the Defendant's second brief but the Magistrate filed by on January 5, 2004. Point being that the excise on the date of June 14, 2004 was to develop and resubmit material that the Court would use in determination of either trial by jury on the Plaintiff's behalf or for the purpose of granting the Defendant's summary motion. And those recommendations were suppose to come from the Plaintiff's second response to the Defendant second motion. *(See Court transcript from 6/14/04).*

In Summary the Plaintiff respectfully requests the Court of Appeals to apply the above brief Statement of Fact to the informal brief notice mr2, 05-1506.

Respectfully submitted,



Christopher Lawrence  
Pro Se  
2740 Highpoint Road  
Snellville, GA 30078  
678 344 4518

2 mr  
05-

1506

**INFORMAL BRIEF**

**1. Jurisdiction (for appellants only)**

- A. What is the name of the court from which you are appealing?

**Response:** U.S. District Court for the District of South Carolina, in Aiken

- B. What is the date(s) of the order or orders you are appealing?



**Response:** Order granting Defendants Motion for Summary Judgment dated March 31, 2005

**2. Timeliness of appeal (for prisoners only)**

When did you give your notice of appeal to a prison officer for mailing to the United States District Court? Enter the exact date:

**Response:** N/A

**3. Issues on Appeal**

Use the following spaces to tell the United States Court of Appeals for the Fourth Circuit why the judgment under review should be affirmed, reversed, or vacated and remanded. Appellants must provide a brief summary of the facts and arguments that support their position that the judgment under review was wrong. Appellees may rely on the facts and law stated in the judgment or may advance alternative grounds for affirmance or dismissal. The parties may cite case law, but it is not required. **See Plaintiff's attached Statement of Facts, M5; and also Attached exhibits M8A, PLAINTIFF'S SUPPORTING EXHIBITS; 52, PROCEDURE MANUAL 2.9; L52A, PROCEDURE MANUAL 2.9; L52A, PROCEDURE MANUAL, 2.7; WSRC-lawr549, Constructive Discipline Assessment; WSRC-Lawr575 Constructive Discipline Assessment; WARC-Lawr601, Constructive Discipline Assessment; WSRC-Lawr608, Constructive Discipline Assessment; WSRC-Lawr607, Constructive Discipline Assessment; WSRC-Law623, Constructive Discipline Assessment Constructive; WSRC-643, Constructive Discipline Assessment; WSRC-Lawr650, Constructive Discipline Assessment Discipline Assessment; Court transcript document on June 14, 2004.**

**Issue 1.**

Is the at-will employment relationship of WSRC and Lawrence modified by an employee handbook under South Carolina Common Law?

mr2

05-1506

**Supporting Facts and Argument**

Yes. The Department of Energy policy 350.1 obligates all DOE contractors to have HR policies approved by DOE. WSRC submitted policy Manual to DOE as its HR policy to support WSRC's multi billion dollar DOE contract for managing Savannah River. The 5B Manual is a unilateral contract with workers

modifying the at-will relationship.

See *Small I; Small II*; Miller v. Schmid Laboratories, Inc. 414 S.E.2d 127 (S.C. 1992); kumpf v. United Telephone Company of the Carolinas, 429 S.E.2d 869 (S.C. App. 1993); Jones v. General Electric Company, 503 S.E.2d 173 (S.C. App. 1998); Prescott v. Farmers Telephone Cooperative, Inc. 516 S.E.2d 923 (S.C. 1999); Williams v. Riedman, 529 S.E.2d 28 (S.C. App. 2000); Conner v. City of Forest Acres, 560 S.E. 2d 606 (S.C. 2002); Baril v. Aiken Regional Medical Center, 573 S.E.2d 830 (S.C. App.2002).

Small v. Spring Industries, 388 S.E.2d 808 (S.C. 1990) (Small II); Baril v. Aiken Regional Medical Center, 352 S.C. 271, 573 S.E. 2d 830 (2002), Small, supra, 357 S.E.2d 452,454.

And see Prescott, supra, at 926.

Procedure 2.7 is part of policy Manual 5B and Procedure 2.7 defines Probation period and also how the Defendant was to conduct and handled informative meetings and old contracts. A genuine dispute exists with regard to whether WSRC was permitted to terminate the Plaintiff when probation contracts

indicate that Plaintiff followed appropriate probationary guidelines did WSRC violate Procedure 2.7 regarding informative meetings and old informative contacts.

### **Supporting Facts and Argument**

Procedure 2.7 was part of the record before the Trial Court (Plaintiff exhibit 2 and 8 within document exhibit M8A). Moreover the Plaintiff clarified Procedure 2.7 in this briefing attachment L52A. This procedure is an integral part of the 5B Manual. On September 29, 2000 the Plaintiff was put on 1 year probation to correct his tardiness and unexcused absence. Monthly contacts (exhibit WSRC-lawr549, WSRC-lawr575, WSRC-lawr601, WSRC-lawr607, WSRC-lawr608, WSRC-lawr612, WSRC-lawr618, WSRC-lawr623, WSRC-lawr643, and WSRC-lawr650.) It was referenced on pg. 14, July 1, 2004, in the Plaintiff's Memorandum in opposition to the Defendant's second Motion for Summary of Judgment. It was again reference on pg. 10 in the Plaintiff's Disputed Facts on June 17, 2004. The Plaintiff's statement to the record on June 17, 2004 and July 1, 2004, in the attached probation contact exhibits and indicate that the Plaintiff was meeting the goals and standards set as part of his probation requirement. On August 29, 2001, 1 month short of the end of probation period, the Defendant WSRC, terminated Plaintiff for **"Failure to follow the terms of probation and insubordination"**. See (exhibit 25, located in Plaintiff M8A filed on August 4, 2004), the grounds for termination is contradicted by the monthly probation contacts. The Trial Judge ignores the evidence in the record (refer to June 17, 2004, and July 1, 2004 statement of meeting the goals continuously) regarding the conclusion that was no genuine issue of Material fact concerning 2.7 procedure in the Plaintiff's Statement in metting the Defendant's goal while on probation.

### **Issue 2.**



If Trial Court finds that a written document modifies the at-will status of the employment relationship, may the Trial Court interpret language in the handbook and draw conclusions.

### **Supporting Facts and Argument**

No. South Carolina courts repeatedly held that the inferences and conclusions to be drawn from the handbook language are province of jury.

Since both Magistrate and Trial Judges acknowledge WSRC Policy Manual 5B existence the Plaintiff is entitled to get a Jury trial on inferences and conclusions.

### **Issue 3.**

Defendant changed the Statement of Undisputed Facts in an attempt to diminish the animus of the case. The Magistrate used the altered changed document in presenting his (R&R). The Magistrate is an advocate and partisan for the Defendant allowing the Defendant to submit a changed document that is specifically stated in the Court record. The Magistrate gave conflicting instruction during the June 14, 2004 hearing regarding where the determination of Summary Judgment was to come from. The Magistrate then used the Defendant's first summary (40-1) instead of Defendant's second summary (41-1) The Magistrate gave his interpretation and wrote about material that was never discussed or served upon the plaintiff. The Magistrate's points that could not be used that were outside of the Court's instructions are listed in the Plaintiff's Attached Brief of Statement of Facts. The Magistrate did not review or consider the Plaintiff's evidence before the Trial Court.

### **Supporting Facts and Argument**

See Defendant's changed Statement of Undisputed Facts as exhibit M5. See the Court Transcript on June 14, 2004 that specifically shows the facts were changed by the Mr.

Thompson. Regarding the Magistrate using the altered facts presented from the Defendant, See the Magistrate (R&R), Report of Recommendation file date July 19, 2004. Regarding the Magistrate's advocate and partisan relationship with the Defendant, see Plaintiff's pleadings filed on August 04, 2004 and the Plaintiff reply pleading on August 24, 2004 with the associate exhibits. Regarding the Magistrate violating his own instructions and introducing the Defendant's disputed material outside of what was specifically communicated; see the attached Court Transcript from June 14, 2004. Regarding The Magistrate not reviewing the Plaintiff evidence and material of Facts, see also the Court Transcript on June 14, 2004 where the Magistrate stated the Court will not cull through documents.

#### 4. Relief Requested

What do you want the Court of Appeals to do? Identify exactly the relief you seek.

**Response:** Reverse Summary of Judgment Order

#### Prior Appeals (for Appellates only)

A. Have you filed other appeals in this Court

\_\_\_\_\_ Yes   X   NO

B. If you checked YES, what are the case names and docket numbers for those

Appeals and what was the ultimate disposition of each.

Christopher Lawrence  
Signature

[Notarization not required]

Christopher Lawrence  
Print name here

Facility management has concerns in the taking of Mr. Lawrence's personal time in the affect that it has on his ability to train and ultimately become qualified. The facility management would like to remind Mr. Lawrence of the time bank policy. Forty hours of time bank was added to your vacation hours to be used for personal illnesses/emergencies. Management expects that employees keep some of this for unexpected absences. You currently have 0-time remaining. Your management is not obligated to provide make up time for you. Time off without pay will not be granted except for bonafide emergencies. If you have unexcused absences, disciplinary action may result. The following is a record of Mr. Lawrence's recent absences including behavior, which failed to meet the policies and procedures of the 5B manuals.

Mon. 3-6-00 Christopher Lawrence was assigned to the NMS&S division.

Mon.3-6-00 FLS received a phone call from H.R. that they received a call informing them that Mr. Lawrence was taking an S.V. FLS Called his home and left on his answering machine several phone numbers that he could reach the FLS and the facility Control Room.

Tues.3-7-00 H.R. received a phone call from Mr. Lawrence requesting another S.V. H.R. notified the FLS that same day.

Mon.3-13-00 Mr. Lawrence called into the facility Control Room super vision before 0600 notifying that he had some personal business that morning, and would be in later in the day. Later in the day he called back saying that he needed to S.V. the rest of the day. The Control Room supervision Granted the S.V.

Mon.3-20-00 Mr. Lawrence called into the facility Control Room and spoke to the supervision for an emergency S.V. about 0200 with his daughter in the hospital.

Tues.3-21-00 Mr. Lawrence notified the FLS that he would be with his Daughter in hospital. Emergency S.V. was granted by the FLS.



Mon.3-27-00 After his training class was completed a 4.5 hr. S.V. was granted by the FLS.

Tues.3-28-00 Mr. Lawrence called into the Control Room supervision for an emergency S.V. before 0600 with his ill wife. S.V. was granted.

Wed.3-29-00 Mr. Lawrence and the FLS discussed the concern of the amount of time left in his time bank and the 24hr notice of S.V. usage per the 5B manual. A verbal contact was made.

Mon.4-03-00 Mr. Lawrence reported to work 45 minutes late. An S.V. was granted by the FLS for 2hrs after the training class was completed.

Tues.4-4-00 Mr. Lawrence reported to work 20mins. Late. Stated "There was no Escort was at the gate to bring him in when he arrived at 0630 at the Gate. FLS discussed with him that the operators are to report into the facility at 0630". The time was made up for 4-3-00 and 4-4-00 on this Day.

Wed.4-5-00 Mr. Lawrence reported to work 1hr 15minutes late due to left his badge home and to return to get it. This time was made up on this Day.

Thurs.4-6-00 FLS met with Mr. Lawrence to discuss a written informative contact addressing the attendance issue. Of which he did not agree with and chose not to sign. His choice was noted on the contact.

Mon.4-10-00 Mr. Lawrence contacted the FLS at home at 2200 on 4-9-00 requesting a half S.V. to take care of some personal business. He later called into the facility Control Rooms supervision requesting the rest of the day off for personal business. The S.V. was granted by the Control Room Supervision.

Tues.4-11-00 Mr. Lawrence called the facility Control Rooms Supervision at 0505hrs requesting a 10hr S.V. Due to personal illness. He also stated that he was going to see his Personal physician. Upon returning to work no medical slip was requested of him or presented by him.

Mon.4-17-00 Mr. Lawrence called the FLS 0600hrs requesting a 10hrs S.V. due to personal illness. He was

verbally reminded of his time remaining in his time bank. At 0825 received a call from him that he was at A-area medical checking in and that there is a possibility that he mite be out for a couple of days with his personal illness. He asked if he could save the S.V. time and take the time off without pay. Reply from the FLS was " That additional approval would be necessary". The FLS contacted medical on the state of Mr. Lawrence. Medical informed FLS that sent him home to check in with his personal doctor. Medical informed him that any more time off would have to be determined by his personal physician and to call his FLS to explain when mite be able to return to work.

Tues. 4-18-00 Mr. Lawrence did not report to work on this day and did not make proper notification to the FLS until the next morning 4-19-00. 5.5 hrs will be deducted from his time bank and 4.5hrs will be listed as excused without pay.

Wed. 4-19-00 Mr. Lawrence notified the FLS at 0610 saying that he was ill and would not be coming to work. The FLS requested for him to bring in a doctor's excuse and check in with medical when he return to work. His absence of 10hrs from work was recorded as excused without pay in TACS.

**EXHIBIT**  
**24**  
**PLAINTIFF'S**

**OSR 3-4A-W (Rev 1-89)**

**WESTINGHOUSE SAVANNAH RIVER COMPANY  
INTEROFFICE MEMORANDUM FINAL REPORT**

November 1, 2000

To: EEO FILE s/ Machell Mims

From: Machell Mims, EEO Specialist

RE: Christopher Lawrence: Alleged Harassment by  
Management

**Purpose**

The purpose of this investigation is to determine if management as alleged in his complaint to EEO on Friday, September 29, 2000 subject Christopher Lawrence to harassment.

**Background**

Chris Lawrence is a production operator, grade 18, in H-Canyon with NMS&S Division. He was assigned to NM S&S in March 2000.

**Methodology**

- EEO conducted the investigation
- The following employees were interviewed:
- Christopher Lawrence, Production Operator
- Ralph Thigpen, FLS
- Tommie Wood, Shift Ops Manager
- Dr. Botnick
- Steve Williams, Deputy Facility Manager, H-Canyon

The following documents were reviewed.

Mr. Lawrence's medical records

Print out of Mr. Lawrence's TACS record

Procedure 2.24 of the 5B Manual

Mr. Lawrence's personnel file

Mr. Lawrence's Constructive Discipline file

**EXHIBIT 369 WSRC-570**

**PLAINTIFF'S**

**II 570**



Mr. Lawrence returned to work on September 22, 2000. Mr. Lawrence was placed on probation for failure to keep Management informed of medical condition, insubordination, unsatisfactory job performance and violation of rule of conduct.

### **Conclusion**

Investigative findings did not reveal evidence of harassment by management as alleged by Mr. Lawrence. Management and site medical made several attempts to contact Mr. Lawrence to determine the status of his disability and recovery/time.

Evidence revealed Mr. Lawrence did not keep management informed, did not return their calls in a timely manner and was overall uncooperative in management's efforts to establish a return to work date. As a result, Mr. Lawrence was placed on probation for violation of company policy.

**WSRC-Lawr571**

**II 571A**

TO: Dave Olson/Charles Nickell  
FROM: Leroy Myrick, HR Rep  
RE: Willard Ralph Thigpen Jr.

SUBJECT: Larry Davis (Operator) vs. Ralph Thigpen (FLM)

Larry Davis went to Sharon Mathis (EEO) complaining about Harassment he received from Ralph Thigpen a manager also assigned to the 221-H Canyon Facility.

**PERSONNEL INTERVIEWED**

- Judy Dunning      WF   H Canyon Ops Manager
- Matthew Miller BM   H Canyon SOM
- Daisy Graham      BF   Operator
- Barbara Schmidt   WF   Sr. Ops Support Specialist
- Nester Washington BM   Operator
- Carlton Travis    BM   H Canyon SOM
- Vickie Martin      WF   Operator
- Erin Williams Jr.   WM   Crane Operator
- Daryle S. Logan WM   Operator
- Ralph Thigpen      WM   FLM
- Larry Davis        BM   Operator

**STATEMENTS GIVEN BY PERSONNEL:**

- Thigpen don't need to be supervising any personnel
- Manages by intimidation—thinks he is still in the military
- Nasty—consistently curses at employees
- Make statements like “my building” and “my people”, I do what I want
- Does a good job dividing up the assignments—has no people skills.
- Once he knows he can push your button, he will.
- Management knew he had problems before he was promoted. He was cursing out management before he was promoted.

**JJ 938 (1)**

- He gets a lot of work done at any cost-80% of the work is not done by the books. This is the reason anagement is looking the other way.
- One employee has gone to Judy Dunning complaining about Thigpen at least three times and nothing has been done.
- He has been in the lunchroom telling the employees he got Christopher Lawrence and Sherri George terminated.
- He also talks about how he made Wayne Hall lose his crane operator position.
- Within six months someone is going to lose his or her job because of Thigpen.
- Management acts like they are afraid of him.
- If management don't correct the problem this time he is really going to be terrible.
- He cursed one operator out and she was given a contact.
- I had to change shift because of Thigpen.
- Upper management in the facility has always turned their heads- which is why most people have given up.
- He has came in early to see what the other shifts are doing.
- How he gets by I don't understand
- In my opinion management is afraid of Ralph
- Nobody wants to work with him. (overtime, etc)
- All management want is to get the job done.
- I would love to have him working for me because " I can control him".
- When he was on shift 11 he was referred to as "King Ralph", because management allowed him to get away with so much.

**CONCLUSION**

There is no clear evidence that Thigpen harassed Larry Davis. There is evidence that we have a potential problem with Thigpen continuing in a supervisory capacity.

**RECOMMENDATION**

I recommend that Thigpen be assigned to a non-supervisory position.

WSRC 00939

**EXHIBIT 8**

**PLAINTIFF'S**

**JJ 939**



From: Larry Davis Sr.

July 23, 2003

This is my complaint against Ralph Thigpen, shift 41  
First Line Supervisor (FLS):

1. I was working in a plastic hut wearing a respirator and became hot or overheated and stopped work to cool off. Supervisor **Thigpen confronted me in an angry tone of voice asking " why did you stop working"** I reported the incident to Judy Dunn, Operation Manager.
2. December 2002 Christmas Dinner my group were trying to have Christmas dinner with all managers present. Supervisor Thigpen came in and harassed me about when I was going to start a job. The job was not scheduled until after the dinner was completed.
3. April 2003 I was working on a job deconning. After the job was completed, Supervisor Thigpen questioned other operators about how efficient was I working.
4. Even thou Supervisor Thigpen is not my Supervisor, he often comes around to see what I am doing and goes back and report some kind of Fabrication to my manager Kevin Usher. Supervisor Thigpen is always stalking me for what reason I have no idea.

WSRC 000940

EXHIBIT

12

PLAINTIFF'S

JJ 940

5. May 29, 2003, I called into my supervisor for an emergency

SV (short vacation) and left a voice mail to my supervisor Kevin Usher and I also called the shift that was on duty at the time and informed Seaborn Warren that I was not coming in. Ralph Thigpen was the on coming shift at the time. He emailed all my managers stating that I did not have approval for a SV. He had nothing to do with me or my SV. This was another way to harass me.

6. July 21, 2003. After lunch I was working on my RAD (Radiological) worker II on the computer in my supervisors office. Ralph Thigpen called a supervision and said I was not on the job or work area, but sitting around doing nothing. This was another case of harassment.

WSRC 000941

**EXHIBIT 13**  
**PLAINTIFF'S**

**JJ 941**



### **STATEMENTS GIVEN BY PERSONNEL:**

- Thigpen don't need to be supervising any personnel.
- Manages by intimidation
- Nasty-constantly curses at employees.
- Makes statements "my building" "my people", I do what I want.
- He tries to be intimidating.
- Once he knows he can push your button, he will.
- Management knew he had problems before he was promoted. He was cursing out management before he was promoted.
- He gets a lot of work done at any cost-80% of the work is not done by the books. This is the reason management is looking the other way.
- One employee has gone to Judy Dunning complaining about Thigpen at least three times and nothing has been done.
- He has been in the lunchroom telling the employees he got Christopher Lawrence and Sherri George terminated.
- He also talks about how he made Wayne Hall lose his crane Operator position.
- Within six months someone is going to lose his or her job because of Thigpen.
- Management acts like they are afraid of him.
- If management don't correct the problem this time he is really going to be terrible.
- He cursed one operator out and she was given a onctact.
- I had to change shift because of Thigpen.
- Upper management in the facility has always turned their heads-which is why most people have given up.
- Foul mouth and curses his operators
- How he gets by I don't understand
- In my opinion management is afraid of Ralph
- Don't anybody wants to work with him..(overtime, etc)

**EXHIBIT 7 PLAINTIFF'S WSRC 00942**

**JJ 942**

Author:Stephen Williams at SRCCC10

Date: 7/12/00 2:40 PM

Steven Williams at SRCCH09

Subject: RE [2] : INAPPROPRIATE ACTIONS?

----- Message Contents

----- Forward Header -----

Subject: Re [2] : INAPPROPRIATE ACTIONS?

Author: William Sokolo at SRCCH11

Date: 7/12/00 12:42 PM

Judi, we are on the case. Thanks

----- Forward Header -----

Subject: Re [2] : INAPPROPRIATE ACTIONS?

Author: William Sokolo at SRCCH11

Date: 7/12/00 12:23 PM

Please look into this and advise me ASAP.

----- Forward Header -----

Subject: Re [2] : INAPPROPRIATE ACTIONS?

Author: Judi Stewart at SRCCB03

Date: 7/12/00 9:42 AM

Bill, Please follow up on attached issue and provide us with the results of investigation. As you will see from the attached emails, Deborah Solomon is the contact person in Safety & Health Ops.

Thank you. Judi

----- Reply Separator -----

Subject: Re [2] : INAPPROPRIATE ACTIONS?

Author: Sandra Hyman at SRCCH19

Date: 7/12/00 6:01 AM

Judi, Marsha, In my opinion, this sounds like workplace violence issue and I would like it investigated as such. I am interested in your feedback once you have had an opportunity to speak to NMSS-HR. Please provide feedback by COB Thursday.

Thanks, Sandy

WSRC 000948

Subject: INAPPROPRIATE ACTIONS?

Author: Debd Solomon at SRCC27

Date: 7/12/00 5:43 AM

Judi, this is the information that was obtained from Steve Oppenheimer pertaining to the inappropriate behavior of **Mr. Thigpen**. As I stated earlier, and as Steve has documented in his attached write-up, this matter has been discussed with his supervision.

**Thigpen has acted inappropriately in the past** with Kevin Webster (RCO-FLS) and with Janice Shelby-Bently (RCO-FLS). I discussed his behavior with his supervision at that time, but it appears things have not change.

Subject: INAPPROPRIATE ACTIONS?

Author: Steve Oppenheimer at SRCCH03

Date: 7/12/00 2:07 AM

Deborah, I am writing this to you as a follow up to your request for future information regarding the actions of W. R. Thigpen on and since the night shift 5/16/00. Late in the morning hours of the shift that started at 1830 hours on 5/16/00, a pre-job briefing was held to decontaminate the CD-5 cask car located in the Rail Road Air lock. W.R. Thigpen was the individual giving the briefing. I believe the following personnel was also present: Lee Darnell, Barry Pica, and Don Yancy. When Thigpen mentioned that he wanted someone to crawl under Rail Car to decontaminate, I reminded him that a near miss had occurred the last time we had tried to do that. I then informed him that the protective clothing for that evolution was not sufficient for that particular task, and the Radiological Work Permit had not been changed to reflect the orestringent requirements for crawling under the cask car. **Thigpen became livid** when I tried to suggest alternative measures to perform this task. He began **yelling, using abusive and threatening language, and was waving his arms around like a mad man**. I told him I could contact my supervisor to help the situation, but he became even more perturbed at this. **EXHIBIT P2 Plaintiff's WSRC000949**

I told him then I was calling the shift manager, Tommy Wood. Thigpen grabbed the phone before I could attempt to call and made the call himself. I later spoke to Mr. Wood on the phone and ask if I could come talk to him about the situation. Mr. Wood said he would come to the shift office to see what was going on. When Mr. Wood arrived in the shift office, all others had left except Thigpen and myself. Thigpen began **yelling** and **cursing** at Wood at this time. Mr. Wood tried to calm him down, but Thigpen was **ranting and raving** about "Radcon thinks they run the show around here, I'll show them" (Approximately quoted)

I left the shift office when Thigpen began **yelling "we aren't going to do a G. Dam thing."** I informed my immediate supervisor, and you, (D. Soloman), as soon as possible. In following days, comments were directed at me snidely from Thigpen. His personnel told me he was mad, and was going to get me back.

Thigpen appears to have taken it as a personal affront that I was doing my job to protect his personnel from Radiological hazards. He blamed me personally for not having the RWP changed prior to him wanting to crawl under the Rail Car again. He **cursed** me and acted threateningly toward me. He made the statement to his workers to the effect that he would get me back for standing in his way of getting the job done, no matter the risk. **He has since made detrimental Official Log-book entries** about me using my name. I feel Thigpen is trying to use his position as a first line Supervisor (FLS) to intimidate me to allow him to perform work around the guidelines, rules, and procedural requirements.

I also believe Thigpen to be reckless and dangerous to personnel and equipment.

I hope this satisfies your request for more information on this series of events. I also hope this can be resolved without legal intervention. Thanks Steven

WSRC-000950



Author: Steven Williams at SRCCH09

Date: 7/13/00 6: 30 PM

Formal

cc: Wiliam Sokolo at SRCCH11, Lyden-Dave Olson at SRCCH17; Scott Booth, Sandra Hyman at SRCCH19, Debd Solomon at SRCCH27, Leroy Myrick at SRS

Subject: Management Expectation Meeting with Ralph Thigpen-P&C (OUO)

- - - - - Message Contents Personal & Confidential

This memo documents a meeting that I held this morning with Mr. Thigpen to discuss RCI inspectors claims of intimidation and verbal abusive languages used toward him on 5/16/00. This allegedly occurred during a job evolution while deconning CD-5 cask car. Without getting into all the explanation of why's on what happened that day, Mr. Thigpen agreed that he was out-of-line on his language and that he never asked anyone to do anything contrary to WSRC procedures. He did agree that all matters of disagreement in the future will be taken to his supervisor.

WSRC 000951

JJ 951

At approximately 1430 on 8/26/01 I (Bruce Cain) took a phone call in the Control Room from Chris Lawrence. He told me to leave Ralph Thigpen a message. He said that he had seen his doctor and was told to stay home for 2 to 3 days since he was taking Tylenol 3 for his sinus problems. He also said to tell Ralph that he was going to his mother's house and would be home later if he wanted to call him.

I relayed the message to Chuck Oerman (First line Supervisor) and David Nason (Shift Operation Manager)

s/ Bruce Cain

Bruce Cain

8/26/01

**EXHIBIT**

**22**

**PLAINTIFF'S**

WSRC-Lawr658

**JJ 658**



Lyden-Dave Olson

To: Robert-Hr Moody/WSRC/Srs@Srs

Cc: Sandra Burnett/WSRC/Srs@Srs

Subject: CHRIS LAWRENCE

08/28/01 06:05AM

We may want to jump right to termination. ....

Forwarded by Lyden-Dave Olson/WSRC/Srs on 08/28/01

06:04AM

Willard Thigpen

To: Lyden-Dave Olson/ WSRC/Srs@Srs

Cc: MICHAEL LEWCZYK Les Sonnenberg/WSRC/Srs@Srs

Subject: CHRIS LAWRENCE

08/28/01 01:16AM

Dave,

I called Chris' home at 0645 hrs on 08/27/01 and his wife informed me he wasn't home. I called again at 1800 hrs. 8/27/01 and got a recording from his answering machine and I left a message for him to contact me when he got home. I again called his house at appx. 1930 hrs on 8/27/01 and his son answered the phone and I asked him if Chris was home and he stated no. I asked him if he knew where he was and he told me that he had seen a doctor and was given some medication. I thanked him for the information and got off of the phone with him. At 2355 hrs. on 8/27/01 I received a call from Chris while I was in the control room. He asked me what I wanted and I told him I had tried numerous times to get in touch with him and he wasn't at home. He told me hhe didn't appreciate me interrogating his wife and I responded that I had simply asked her where he was which she never gave me an answer to. Chris informed me at this time he wasn't living at home anymore and that the woman he was living with didn't have a phone. I informed Chris he had been instructed to either call myself or SOM Wood anytime he couldn't report for work and we were the only ones he was to

**JJ 666 (1)**

contact about this. I had told him that SOM Wood and myself always get to work 30-40 minutes early everyday and for him to call me at home or between the hours of 0600-0615 hrs. if on days or 1800-1815 hrs. if we were on nights. His reply was that I don't have to call you at those time and I again stated you were instructed to do that Chris. He said I don't have to call your damn ass at that time and he would deal with me when he got back. I asked him what he had said and he would'nt repeat it again. I told him he didn't report his illness as he was directed to and I was trying to find out what was going on. He started yelling over the phone that I must be crazy and for me to do what I wanted to do. I turned the phone were SOM Wood could hear him yelling at me on the phone. he stated he had called earlier that day on 8/26/01 and left a message for me. I again told him that wasn't what he was directed to do with regards to calling in sick and that he hadn't left a phone number he could be reached at.

Ralph Thigpen  
FLM Shift 11

**WSRC-LAWR 666**

**JJ 666**

**Adrian Smith**

To: Thompson @ mandtlawfirm.com

cc: Mtesa Cottemond/WSRC/Srs@srs

Subject: Lawrence v. WSRC

10/03/03 03:22 PM

Law Offices

Malone & Thompson, LLC

OCT 06 2003

I am sending to you today two files I received from one of Ralph Thigpen's upper managers, Les Sonnenberg. The first file with Les' note on the front is part of the manager's field file. I have a paper clip on the pages that must be the complaint Lawrence is referring to. **Thigpen apparently has a history of unprofessional behavior.** Of those mentioned in this complaint, Oppenheimer and Webster are white males and Bentley is a black female.

Sonnenberg also sent the second file which is an investigation conducted by Leroy Myrick, HR Rep, as the result of a recent complaint against Thigpen. Larry Davis is a black male. I'm sending this to you to help you get a good picture of Thigpen.

I'm also including an informational spreadsheet of the people listed by Lawrence as witnesses or whatever he calls them.

Adrian Smith  
WSRC-OGC  
725-2588

**EXHIBIT 5**  
**PLAINTIFF'S**  
WSRC Lawr000913

**JJ 913**



THE HOYT & ANKLE GROUP, P.C.

1111 South Main Street  
Augusta, GA 30901  
706-724-1111  
706-724-1111  
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1111 South Main Street  
Augusta, GA 30901  
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1111 South Main Street  
Augusta, GA 30901  
706-724-1111  
706-724-1111

DISABILITY CERTIFICATE

TO WHOM IT MAY CONCERN:

I hereby certify that Christopher J. Smith  
has been under my professional care and has:

☐ Totally incapacitated ☐ Partially incapacitated

From 8-3-00 to 10-1-00

May return to work on \_\_\_\_\_

☐ Light ☐ Regular

Reason: injury

Signature: [Signature]

Date: 10-1-00

WSRC-Lawr342

#8

This is what Mike's got from his doctor

KK 100

**Robert Botnick**

To: Leroy Myrick/Srs@Srs,  
Steve Williams@Srs,  
Mike Warnsted/WSRC/@ Srs,

cc: William Sokolo@Srs,  
Lyden-Dave@ Srs,  
Scott Booth/WSRC/Srs@Srs

Subject: Chris Lawrence- Disability P&C  
09/14/2000 03:01 PM

I would like to add the following information concerning this Matter prior to setting up a meeting with HR and the General Council for purposes of establishing a path forward.

The medical records shows no evidence of his contacting us Relative to his foot surgery and details were only learned after I left a message on his answering machine on 8/10/00. He has never made an independent attempt to contact me since he went out with his present illness. I learned from his doctor that the first follow-up appointment would be on 9/7/00 and he would not release to return to work until he had a chance to re-evaluate him at that time. His doctor removed the original cast and replaced it with a walking cast on 9/7/00 and faxed me a list of restrictions when he return to work. In the face of this information, I asked Mr. Williams to have Mr. Lawrence report to medical to return to restricted duty on 9/11/00. When he ~~did~~ not report on 9/11, I attempted to contact him and finally succeeded about 4:45 pm on 9/12/00, at which time I informed him that he should have been able to return to restricted work on 9/11 since he now had a walking cast. He said that was impossible since he drove a 5-Speed stick shift

**KK 105 (1)**



car and he had a cast on his leg. I reminded him that the same question came up 2 years ago when he had his surgery on his other foot and he was told it was up to him to arrange for transportation. He again replied "are you going to send someone to pick me up?" and I again told him no. I think this it is crucial that medical, management, HR, and general Council meet ASAP to address this ongoing problem.

---

**KK 105 (2)**

## **Dr Botnick's statements to Petitioner's Management**

His absences – people in management have reported to me  
And to have driven by (store at 8<sup>th</sup> & Board Street) in the  
evening plus seen his car there excessive

- #1 – 8 weeks is ridiculous for normal time out for surgery.
- Big of ordeal in 1998; I guess you can say that I'm targeting him. The company has been "had" once.
- Can't afford to pay his medical if he is not going to be here.
- Not paying him want hurt him -- he just needs the benefits

**EXHIBIT      WSRC-522**  
**522**  
**PLAINTIFF'S**

**KK 522**

**Robert Botnick**

To: Clide Coppin/ Wsrc/Srs@srs,  
Mary Cliché/WSRC/Srs@srs,  
Janet Kight/WSRC/Srs/@Srs,  
Patricia Matlock/ WSRCSrs@srs,  
Sheila Scruggs/ WSRC/Srs@srs,  
Pamela Skipper/WSRC/Srs@srs,  
Sharon Wingard/WSRC/Srs@srs,  
Patricia Rogers/WSRC/Srs@srs,

cc: Wayne Entrekin/WSRC/Srs@srs,  
Lesley Garrison/WSRC/ Srs@srs

Subject: Christopher Lawrence [REDACTED] {OUO}

07/10/2001 08:15 AM

**PERSONAL AND CONFIDENTIAL**

In order to **track** Mr. Lawrence's disability time more effectively In the future, I have asked his management to notify H Medical as soon as they know he is going to be out. This information should then be passed on to Dr. Garrison, myself, or Dr. Entrekin, as soon as it is known, so that we can do a timely follow-up

WRSC- 647

**EXHIBIT**  
**289**  
**PLAINTIFF'S**

**KK 647**

**Leroy Myrick**

To: Lyden-Dave Olson@SRs

Sent by: Leroy Myrick

cc: Frank Jordan@Srs,

James French@Srs,

William Sokolo@Srs,

Randy Yonce@Srs

06/05/00 07:50

Subject: Chris Lawrence- Absence P&C

We do not have to allow Mr. Lawrence time off without pay. We can tell him to come to work. If he doesn't that is **unexcused without pay**. At this point we move to the next level of discipline. It will be difficult to discipline an employee when we allow him to take off.

**Lyden-Dave Olson**

To: William Sokolo,

Leroy Myrick/ WSRS/Srs

cc: Frank Jordan, James French

Subject: Chris Lawrence-Absence P&C

06/04/00 07:06

cc: Mail Forwarding Information

- - - - - cc: Mail Forwarded - - - - -

From: Steven Williams At SRCCH09

Date: 06/02/2000 10:46 AM

**LL 114 - 1**

To: Seaborn Warren At SRCCC01



To: Kevin Usher At SR SRCCH16  
Cc: Lyden-Dave Olson At SRCCH17  
Cc: Scott Booth  
Cc: Willard Thigpen At SRCCB03  
Cc: Leroy Myrick At SRS

Subject: Chris Lawrence – Absence P&C

When do we move to the next level of discipline with Mr Lawrence? He will have missed 2 shifts absent without pay (May 30 and now June 5) since the informative contact we gave him 2 weeks ago when ran out of time bank time and had dipped into the AWP (absence without Pay) for >20 hours YTD. I cannot continue to invest the amount of time required in this one operator to get him qualified and available for shift work if he won't come to work on a regular basis.

We need to get his attention so he decide which has priority, his SRS employment or his clothing business.

Forward Header \_\_\_\_\_

Subject: Chris Lawrence – Absence P&C  
Author: Steven Williams at SRCCH09

Date: 6/2/00 10:46 AM

Chris called and requested to be off on Monday 6/5 due to an emergency at a factory that supplies ties for his local business and has flown to California. He was excused without pay, please insure his TACS is marked appropriately. I did ask him if he had been

LL 114 - 2



excused at all up to this point since his last Informative and he said no! Is this true? Probably need to anticipate another request like this and what our actions should be the next time.

**EXHIBIT**

**WSRC - 329**

**PLAINTIFF'S**

# SRS

Savannah river site

WESTINGHOUSE SAVANNAH RIVER COMPANY

INTEROFFICE MEMORANDUM

July 26, 2001

TO: CHRISTOPHER LAWRENCE  
221-H

FROM: DAVE OLSON, FACILITY MANAGER  
H-CANYON NMMD HUMAN  
RESOURCES OPERATIONS

**REVIEW OF REQUEST FOR FAMILY LEAVE TO  
CARE FOR SICK CHILD**

We have reviewed your request for Family Medical Leave and with the information provided previously by you and on July 23 by your son's physician, we have concluded that your request does not meet the requirement for Family Medical leave for a period of August 3 through September 3, 2001. However, based upon the information provided, you do qualify for Family Medical Leave on an intermittent basis, when "flare-ups" of your son's asthma create a serious health condition requiring your assistance to care for him

WSRC-000908 EXHIBIT 353 PLAINTIFF'S

LL 353

To: Dave Olson  
: Sandra Burnett

7/31/01

From: Christopher Lawrence  
Subject: Denied Family Medical Leave (FML)

Although your letter stating my request for (FML) did not met the requirement or qualifications, I would like to know by what standards. Certainly nor you or Mrs. Burnett are Physicians qualified to make a medical decision. However, your conclusion to my request should be supported by some form of justification and not only a general letter of non-requirements. There should be some basis to support your findings.

Furthermore, it must be fully realized that I intend to discuss and provide documentation to Westinghouse Corp. Office as to my request and contact various organizations in Washington, DC. who developed this Act such that if any federal or state Laws were violated, I will seek counsel to resolve this matter.

Truly mean to pursue this matter  
s/ Chris Lawrence  
Chris Lawrence

**EXHIBIT**  
**NL-1**  
**PLAINTIFF'S**

**LL 354**

DATE/TIME: 24/00 10<sup>30</sup> AM  
 HISTORY, DIAGNOSIS AND TREATMENT: RTW out 4/17 - 4/24 (28 hrs) Rx as above - doing much better today - all congestion gone - states he requested a longer time to be 3 pay - request to see him regarding time issue - refer to rule 113  
 Panel E Skiff  
 wants leave 3 pay rather than time bank + told him to contact HR re: same  
 AC's entry would be same  
 MEDICAL DISABILITY NOT APPROVED  
 ALL ABSENCES MUST BE TAKEN FROM TIME BANK

DATE/TIME: 24/00 1 PM  
 HISTORY, DIAGNOSIS AND TREATMENT: Consult - here to report he is tentatively scheduled to have foot surgery in August of this year - to have bunionectomy of (L) foot - and reconstruction of (L) heel - broke ankle several years back and was not set - has chronic pains in heel and ankle - tentatively scheduled for 1st week in August  
 RTW 3 restriction  
 Panel E Skiff

DATE/TIME: 24/00 10<sup>30</sup> AM  
 HISTORY, DIAGNOSIS AND TREATMENT: RTW - 4 hrs today - was to report productivity at 6<sup>30</sup> PM - Rx as above - went for blood work today for surgery on 8/1 or 8/3 - was not able to get blood work done due to time constraints - was found to have heel spur on (L) foot - today was given Vicodin 25 mg - took one today at 5<sup>30</sup> PM and it "knocked him out" - cost to be groggy at present - to have bunionectomy of (L) foot and (L) heel spur at this time and surgery of (L) foot approx 2 mos ago is to be repeated in the future - "something is pulling apart" - if he sits for more than 5 min is very sleepy - states about to drive himself home - going to Mother's house - she was called - he has it for medical to call when he gets to Mother's house - called home @ 10<sup>40</sup> PM - Panel E Skiff  
 11 AM note - called to state he had made it home Panel E Skiff

DATE/TIME: 24/00 1<sup>30</sup> PM  
 HISTORY, DIAGNOSIS AND TREATMENT: RTW Rx as above - alert - has not taken med today - having a great deal of pain & difficulty walking - excused home - advised to call and 1st thing Monday AM (7/31) RE scheduled for surgery - Panel E Skiff

DATE/TIME: 8/10/00 4 PM  
 HISTORY, DIAGNOSIS AND TREATMENT: met management because of concern about excessive absences (sick day time bank in April). He hasn't been here for this week so there is no way of knowing if he had surgery. I called Dr Bryant's office (BPM) who did left bunionectomy in 1998 & their records show they haven't seen him since 8/4/99 I called his house & left word on his answering machine that he needed to call manager to be needed to explain

EXHIBIT  
 150  
 PLAINTIFF'S





WSRCH 252 - 27 - 7614 2/22/1983

## TREATMENT RECORD

INSTRUCTIONS. ALL ENTRIES REQUIRE DATE, TIME DISPOSITION AND FULL  
SIGNATURE (NOT INITIALS) FOR PERSON MAKING ENTRY

AREA

ASD

DATE/TIME

HISTORY, DIAGNOSIS AND TREATMENT

8/10/00  
(Cont) his absence. This case is complicated by the fact that he has a retained his business in Augusta (Silk Con-Neck-tion) so absence & pay is not as big a problem as long as WSRCH pays for his insurance. A medical manager got to set up a meeting with HR & general counsel ASAP to plan appropriate path forward. As per the performance contract he agreed an \$10,000, he is supposed to bring a personal physician, medical slip, & check in with site medical when he loses time for personal illness. *Butch*

8/15/00  
2:20p

Spoke with Dr. Kiney re barning surgery on R foot on 8/13/00. Osteotomy followed by casting. ~~re barning~~ for which he has not had a return visit to Dr. Kiney. This return visit scheduled for next wk & Dr. Kiney feels a minimum of 3 wks from time of surgery is reasonable. Will contact Dr. Kiney next wk & talk about RTW on 8/28/00. *Butch*

8/25/00  
1:45p

Spoke with Dr. Kiney's nurse & she states there has not been a F/U appt. so they could not release him to RTW until they see him & get x-rays on 9/1/00. a call to his store yesterday afternoon by one of the nurses resulted in a statement that he would probably be at the Silk Con-Neck-tion this afternoon & his car has been seen by the store but this has not been sanctioned by Dr. Kiney. Have left word.

EXH

151

PLAIN



DATE/TIME HISTORY, DIAGNOSIS AND TREATMENT

8/25/00 @ Dr Kenney's office to direct him to ATW  
(out) on 9/11 & appropriate restrictions & let me  
know if there are any changes. *Buttrick*

9/12/00 Repeated calls to EE since 9/8 telling him  
2:06 p to ATW 9/11 are picked up on his answering  
machine & not returned. I have left  
messages to Dr Kenney for instructions but  
they either go unanswered. I have  
therefore typed a letter to Dr Kenney  
informing him that EE disability payments  
have ceased as of 9/11. *Buttrick*

9/13/00 4:45 p *Buttrick*  
Spoke to Mr Lawrence about need to ATW  
since his walking cast in place @ this  
time. I told him that since he was  
told to report to medical on 9/11, DWP  
payments would not continue after  
that date. As was the case in 1998  
(see entry of 1/29/98) he stated he could  
not drive his 5 speed stick shift car  
with a cast on his leg. I again informed  
him that he would have to find a  
way to work and left it up to him to decide  
what he was going to do but he would  
not receive disability wage payments  
as of 9/11/00. In answer to his question I  
again told him that SRG would not  
send someone out to pick him up  
everyday. A list of restrictions  
have been faxed to me by Dr Kenney.

9/22/00 7<sup>55</sup> AM. Rpt out since 7/30/00 - had examination of L foot  
on 8/3/00. Dr Kenney. See previous entries  
next app<sup>t</sup> to Dr Kenney in 2 wks. Cast was removed on  
9/21. Was put in shoe brace. now walking 5 brace.  
Instructions from Dr. Buttrick. no climbing of ladder, very  
limited stairs, use clutch as needed, may sit as needed  
to drive car. very limited lifting & carrying. Limit  
give authority for other party

EXHIBIT

152

PLAINT

Lawrence, Christopher

## TREATMENT RECORD

INSTRUCTIONS: ALL ENTRIES REQUIRE DATE, TIME DISPOSITION AND FULL  
SIGNATURE (NOT INITIALS) FOR PERSON MAKING ENTRY.

2/22/03

KSLC

DATE/TIME	HISTORY, DIAGNOSIS AND TREATMENT
9/22/00 (cont)	Washed to short distance - instructed to see Dr. Botnick on 9/25. Employee states he would not see Dr. Botnick only another physician at plant. States he has already been in contact with EOC. State took pain medication @ 11 <sup>PM</sup> name? gave him ibuprofen to take at work. will call & let us down the name of his known medical condition through 9-11- given Botnick the name of the condition.
9/23/00 8 <sup>30</sup> PM	Consult - received call from employee to report medications he is taking - Ibuprofen Promethazine, Ibuprofen 800mg, Acetaminophen #3, Penicillin VK 500. Stated that he had refilled the Penicillin VK due to cost drainage from site of wounds both removed on 9/11 - on further questioning he stated that on 9/11 he had lower wisdom teeth removed per Dr. Levene Range - he came to take promethazine for pain in foot - advised that he should not take this while at work and if absolutely necessary no sooner than 4 hrs prior to driving home. However he should not take this med and drive. — Pamela E. Kiger
9/24/00 1 <sup>00</sup> PM	Admin Consult - Ralph Huggins (employee manager) called concerning medication and alertness - discussed with Dr. Botnick - Informed manager that as long as Chris is not <sup>so</sup> involved in critical process to observe and be aware of decreased alertness and to evaluate in Am as to his ability to drive safely home. P. Kiger
9/25/00 8:45 A	Employee seen by Dr. Entschin in view of statement of 9/22. We feel that STD should include 9/11 as stated on his OSR2-1 plus fact he had dental surgery requiring anesthesia that day.
NO TIME BANK WITHDRAWAL thru 9/11/00 CRITICAL MEDICAL CONDITION	
MEDICAL DISABILITY NOT APPROVED after 9/11/00 ALL ABSENCES MUST BE TAKEN FROM TIME BANK	
<div style="text-align: right;">Botnick</div>	

EXHIBIT  
153

PLAINTIFF'S

DATE/TIME	HISTORY, DIAGNOSIS AND TREATMENT
09-25-00 @ 7 <sup>15</sup> AM	Laurence, Christopher NMN (H) Not in the retreat - RTO out since July 29 <sup>th</sup> & was sent home that day Came in 9-29 & was sent home to stay until
	Surgery done 9-1 - Surgery was rescheduled for 9-3-00 Dr Kimney - August 1 <sup>st</sup> - in office procedure. Had bunionectomy, heel spur delayed - has screws and wire in time to stabilize it - Surgery on (2) foot - now in walking boot - no wt bearing on (1) foot without boot -
	Also had extraction of #17 & #32 wisdom teeth on 9-11-00 - note from MD attached explaining procedure & expected to be out of work 4 days work shift #11 = 12.5 days - will pay
	Restrictions requested by Dr Kimney - Meds: Penicillin, mepergan & Tylenol & Codeine to see Dr Entekin _____ Dr Adler, RN
	Note: days missed 9/28, 29, 30 & 4, 5, 6, 8, 9, 10, 14, 15 16, 17, 18, 26, 27, 28, 9/1, 2, 3, 5, 6, 7, 11, 12, 13, 14 - worked 9/22, 23 & 24 on nights & 12.5 hrs - Supr: Ralph Thigpen 8/30/02 - 801 NM 545/ Sep _____ Dr Adler, RN
	Surgical incision of the (2) foot 1st met phalanx is well healed. He has some tenderness of the 4 <sup>th</sup> joint area. There is also relief of tenderness
	of the mid foot (he says there is a hot spot) Imp: S/P bunionectomy (2) 1st met phalanx 7 weeks post op
	Rec: cont some restriction (He has one more day) He returns to work on 29 Sept 00 ret to medical on 25 Sept 00

EXHIBIT  
154  
PLAINTIFF'S

Initials 400



DATE/TIME	HISTORY, DIAGNOSIS AND TREATMENT
<p>Jaworski, Christopher — 7/1/01 — 7:45 AM — Mr. Jaworski's supervisor, Mr. W. R.</p> <p>221-14</p> <p>Supervisor: W. R. Skiggen F-8539</p>	<p>Skiggen called to clarify issues. I always spoke to management, prior to Mr. Skiggen's, arrival concerning pt. Mr. Skiggen reported to clarify the fact that he did not tell Mr. Jaworski that he had to come to medical this evening. Mr. Skiggen stated that Mr. Jaworski called him last evening (6/30/01) to notify him of being out &amp; sinus infection, made he was on, &amp; that Mr. Skiggen had given him an excuse from work for 2 days. Mr. Skiggen states he told Mr. Jaworski he needed to go by medical upon RTW. Mr. Skiggen also states that the pt. was "negotiation fee" in time off order, available, &amp; has stated that he is going to try to get his time back because he has had several sinus infections over a 1 1/2 years span.</p> <p>— (K. Wiggenden) —</p>
<p>7/6/01 @ 7:20 AM. RTW. Out 4-12.5 hrs. beginning 6/29, 30 July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31</p>	<p>related to sinus infection. Saw Dr. Skiggen at their phy. E.R. 6/29/01. Pt. Diaphanous 500mg, (Lidocaine) &amp; 26 mg. Still has a day 9, (Diaphanous) left. States has nasal drainage slightly yellow. Temp 98.4 °F. Requesting to see the MD ref to 24 hr. (Lidocaine) &amp; 26 mg. Sinus Infection is chronic &amp; doesn't think this time should be taken. Paper: (Lidocaine) &amp; 26 mg. It is explained that this is not considered a contraindication due to lapse of time since last infection. He is welcome to appeal. Now is restricting.</p>
<p>8/9/01 — 8:06 PM — Dr. Occ. ill. child — Parents to medical &amp; c/o HIA, (Lidocaine) &amp; 26 mg. Congestion since getting off this pm. States diarrhea improvement since NSA used today. Refuses meds @ present. Out of work 1 hr this pm. Will RTW @ restrictions. Treating, Endless on stain, &amp; performing duties when balance is required. Encouraged to follow up @ PMU. P-60 BP 130/16. — (K. Wiggenden)</p>	<p>8/9/01 6:40 AM Returning to work — out 8/26, 8/27 &amp; 8/31/01 &amp; sinusitis seen Dr. in U.H. ER &amp; Rx of Cepzil 250mg Bid, Claritin-D 1 daily. Lorcet Plus pen head ache — RTW'z no respirator work x 2 days —</p>
<p>9/1/01</p>	<p>— (K. Wiggenden, RA)</p>

EXHIBIT

40

PLAINTIFF'S

WSRC-Lawr801

University Hospital Emergency Services  
Augusta, Georgia 30901-2926  
Tel: (706) 774-6060

Name LAWRENCE, CHRISTOPHER

Date Sun Aug 28, 2001

Cefzil 250 mg Tablet

Disp. 20 (twenty)

SIG 1 tab(s) po twice a day until gone

Refills -0-

Dr. \_\_\_\_\_  
(Dispense as written)

Dr. \_\_\_\_\_  
(Always generic unless specified)  
John H. Polak, DO  
31100 bp1514923

University Hospital Emergency Services  
Augusta, Georgia 30901-2926  
Tel: (706) 774-6060

Name LAWRENCE, CHRISTOPHER

Date Sun Aug 28, 2001

Dr. \_\_\_\_\_  
D 23h Tablet

Disp. 14 (fourteen)

SIG 1 tab(s) po daily

Refills: -0-

Dr. \_\_\_\_\_  
(Dispense as written)

Dr. \_\_\_\_\_  
(Always generic unless specified)  
John H. Polak, DO  
31100 bp1514923

University Hospital Emergency Services  
Augusta, Georgia 30901-2926  
Tel: (706) 774-6060

Name LAWRENCE, CHRISTOPHER

Date Sun Aug 28, 2001

Lorcel Plus (7.5/650)

Disp. 10 (ten)

SIG 1 tab(s) po bid





UNIVERSITY  
HOSPITAL  
An Affiliate of University Health Care System

**EMERGENCY SERVICES DEPARTMENT**

DATE: 26 Aug 01

**TO WHOM IT MAY CONCERN:**

Christyrene Lawrence has been treated at the University Hospital Emergency  
Department for 1/1 mo. He/She will be able to return to work

28 Aug 01  
with the following restrictions: P

If you have any further questions, please call 774-5060.

[Signature]  
PHYSICIAN'S SIGNATURE

**\*\*\*PLEASE NOTE** that the Emergency Department cannot provide a release from work for days ill before being seen here. Nor can we excuse absences **BEYOND** the above date unless you are seen again in the Emergency Room. If you feel you are unable to return to work on the above date, you should see your own physician, clinic, or the physician to whom you were referred for further evaluation.

Revised: October 1987  
Reviewed: March 1989, March 1991, May 1993, Jan 1995



Leroy Myrick  
Sent by: Leroy Myrick

06/05/00 07:50 AM

To: Lyden-Dave Olson@Srs  
cc: Frank Jordan@Srs, James French@Srs, William Sokolo@Srs, Randy Yonce@Srs  
Subject: Re: Chris Lawrence - Absence P&C

We do not have to allow Mr. Lawrence time off without pay. We can tell him to come to work. If he doesn't that is **unexcused without pay**. At this point we move to the next level of discipline. It will be difficult to discipline an employee when we allow him to take off.

Lyden-Dave Olson

Lyden-Dave Olson

To: William Sokolo, Leroy Myrick/WSRC/Srs  
cc: Frank Jordan, James French  
Subject: Chris Lawrence - Absence P&C

06/04/00 07:06 PM

cc:Mail Forwarding Information

cc:Mail Forwarded

From: Steven Williams AT SRCCH09  
Date: 06/02/2000 10:46 AM  
To: Seaborne Warren AT SRCCC01  
To: Kevin Usher AT SRCCH16  
Cc: Lyden-Dave Olson AT SRCCH17  
Cc: Scott Booth  
Cc: Willard Thiipen AT SRCCB03  
Cc: Leroy Myrick AT SRS  
Subject: Chris Lawrence - Absence P&C

When do we move to the next level of discipline with Mr. Lawrence? He will have missed 2 shifts absent without pay (May 30 and now June 5) since the Informative contact we gave him 2 weeks ago when he ran out of time bank time and had dipped into the AWP for >20 hours YTD. I cannot continue to invest the amount of time required in this one operator to get him qualified and available for shift work if he won't come to work on a regular basis. We need to get his attention so he can decide which has priority, his SRS employment or his clothing business.

Forward Header

Subject: Chris Lawrence - Absence P&C  
Author: Steven Williams at SRCCH09  
Date: 6/2/00 10:46 AM

Chris called and requested to be off on Monday 6/5 due to an emergency at a factory that supplies ties for his local business and has flown to California. He was excused without pay, please insure his TACS his marked appropriately. I did ask him if he had been excused at all up to this point since his Informative and he said no! Is this true? Probab need to anticipate another request like this and what our actions sho be the next time.

EXHIBIT

114

PLAINTIFF'S

WSRC-Lawr329

LL115

Steven Williams

To: Seaborne Warren, Willard Thigpen  
cc: Thomas Wood/WSRC/Srs, Earl Brass, (bcc: Leroy  
Myrick/WSRC/Srs)  
Subject: Chris Lawrence - Approval Excused Without Pay for 11/9

11/08/00 04:38 PM

I have approved time off for Chris on 11/9 due to extenuating circumstances. Please mark his TACS accordingly. I explained to him that this is being granted because of two reasons 1) his efforts to improve his performance have been good and 2) with the understanding that he will be back to work Friday night for his regular shift 11/17.

EXHIBIT

**331**

PLAINTIFF'S

Mary Hamilton Anderson, M.D.

Pediatric and Adolescent Allergy

2315 Central Avenue  
Augusta, Ga. 30904

Phone (706) 737-0303

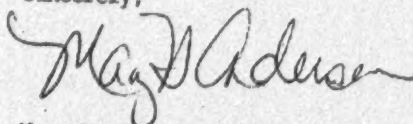
July 11, 2001

To Whom It May Concern:

Nigel Lawrence is a patient I have followed for many years with significant asthma and allergies. He is allergic to pollens, dust mite, and molds and has frequent sinus infections. He has to stay on regular medications for his asthma to include Albuterol jet nebulizer treatments, Advair Diskus, Singulair, and frequent oral steroids to keep his symptoms under control. Nigel has been hospitalized many times for exacerbation of his asthma with numerous severe episodes requiring admission to the intensive care unit.

Please feel free to contact my office with any questions or concerns.

Sincerely,



Mary H. Anderson, M.D.

MHA/mh

EXHIBIT

355

PLAINTIFF'S



## Mary Hamilton Anderson, M.D.

Pediatric and Adolescent Allergy

2315 Central Avenue  
Augusta, Ga. 30904

Phone (706) 737-0303

7/23/01

To Whom it May Concern:

Nigel Lawrence is a 13 year old patient who I have been following for allergic and asthma since 1991. He is allergic to pollens, molds, & dust mite and has frequent sinus infections. Nigel has significant asthma and has been hospitalized numerous times including admission to the intensive care unit. His most recent hospitalization was Jan 2001. In addition he has frequent emergency room visits and was steroid dependent for a while. Nigel still has to have numerous bursts of oral steroids to get his asthma under control despite regular maintenance asthma medication to include Albuterol & inhalizer treatments, Singulair, and Advair which contains an inhaled steroid. His asthma duration has been through his whole childhood and will be long term. Nigel's father feels they could better understand his condition and medication in a home school environment. Please feel free to contact my office with questions or concerns.

EXHIBIT

357

PLAINTIFF'S

WSRC LAW 000879

Provided by Allergy Partners, P.A.



## Application for Family Medical Leave

Name <u>Christopher Lawrence</u>	
Department <u>NMMD</u>	
Current Address <u>221-H Canyon</u>	
Start Date of Anticipated Leave <u>August 3, 2001</u>	Expected Date of Return to Work <u>September 3, 2001 or as condition allows within 12 month period.</u>
Reason for Leave	
<p>Due to the nature of my son's illness I am requesting a FMLA for the above effective dates. In previous conversations with line managers, I explained my current situation of Son's health condition. Concerning Asthma: In addition to the request, I have on several occasions spoken to the level 2 manager explaining why make-up time would help me save time off such that I would be in a better position to both keep my job commitment but also take care of my son's medical condition. However, on three separate occasions, I was denied the usage of make-up time. I've argued my Son's condition of Asthma and provided in print out from the hospital and two different letters from my Son doctor explaining why I should be allowed to take care of my son in his health condition.</p> <p>Explained further the medical treatment visits, the Hospital stay time, the daily consumption of medication by my Son just to stay half way healthy. I explained further why 60% of my Vacation is used up yearly as it relate to my Son down time with Asthma. Surely HR &amp; NMMD line managers see from the information attached that my request is valid and is protected not only by WSHC policies but federal and state statutes.</p>	
<p>Note — An employee requesting leave for the employee's serious health condition or the serious health condition of the employee's spouse, child or parent must submit a verifying medical certification from a physician within 15 days of application for leave.</p> <p>I hereby authorize a health care provider representing WSHC to contact my physician to verify the reason for my requested family and medical leave. I understand that a failure to return to work at the end of my leave period may be treated as a resignation unless an extension has been agreed upon and approved in writing by my manager.</p>	
<p><u>Christopher Lawrence</u> (7-12-01 and 7-23-01) Employee's Signature Date</p>	
Approval	
Supervisor's Signature	Date
Human Resources	Date

Outlook — Copy, Employee Field File,  
Original, Personnel Records 736-1D

000453149

WORLD HISTORY COLLECTION

100-1-1 100-1-1 100-1-1

FFA-TWC

GROUP 11 REPORT

TOTAL MPPs: 1000000000

LL358A

EXHIBIT  
258A  
PLAINTIFF'S

VISIT HISTORY INQUIRY  
LAWRENCE, MICHAEL KENNETH

UNIVERSITY HOSPITAL

10-13-63 12-44  
000455168

VISIT HISTORY SELECTION

Print Line Number

Adm	Dis	Ref	Typ	Dis	Den	Dis	Ref	Lock	Reference	IX	File	Date
01	1217	EE	F	10/09/03	1	10/10/03	H	U	4M			
		GRV										
									10/09/03 HERZMURN, SANDRA H			
02	1346	EE	C	09/03/03	1	09/03/03	H	U	6M			
		NEO										
									09/03/03 CAUDELL, MICHAEL J			
03	1160	IT	K	07/01/03	1	07/02/03	H	U	4M			
		PEO										
									06/29/03 HERZMURN, SANDRA H			
04	3042	IT	K	03/01/03	1	03/02/03	H	U	4M			
		PEO										
									03/01/03 HERZMURN, SANDRA H			
05	2017	EE	E	01/17/03	1	01/17/03	H	U	6M			
		PEO										
									01/17/03 SHAWNER, MICHAEL R			

PEO-RWD

V4311N7

U441 TM R00870

7-7-63 NREA FUELING VISI  
EOT

LL358

EXHIBIT

358

PLAINTIFFS

VISIT HISTORY INQUIRY  
 LAWRENCE MICHAEL KHALIL  
 UNIVERSITT HOSPITAL  
 10/13/03 12:44  
 000455160  
 VISIT HISTORY SELECTION  
 Select Line Number

Visit	Ppt No	Adm/Vis	Type	Dis/Dep	Dis F	Loc	Reference	LE	Film Date
01	3012 ER K	01/12/03	I	01/13/03	N	U	ERED		
	PED						01/12/03 SHAFENER, MICHAEL R		
02	1315 EE K	12/01/02	1	12/02/02	N	U	ERED		
	MED						12/01/02 AHMADIE, ZIAD A		
03	7289 OL K	04/26/02	0	04/26/02	N	U	LAES		
	LAR						04/26/02 HERZWURM, SANDRA H		
04	1184 ER K	07/03/02	1	07/03/02	N	U	EMER		
	MED						07/03/02 TIERNAN, STEVEN M		
05	1041 II K	02/11/02	1	02/12/02	N	U	4W		
	PED						02/11/02 HERZWURM SANDRA H		

PPT-BWD PFB-BWD  
 ASILNE User ID: E09879 Termin MERRA Function VISI  
 \*\*\*\*\*

LL359



\*\*\*\*\*  
 VISIT HISTORY INQUIRY UNIVERSITY HOSPITAL 10/13/02 12:44  
 LAWRENCE, MICHEL KHAITI 000455168

----- VISIT HISTORY SELECTION -----  
 Select Line Number

	Visit	Pmt	En	Adm/Vis	Type	Dis/Dep	Dis	Fee	Loca	Reference	LE	Film	Dat-
	Num	Days		Other	A/CB	HL	Cls	From	Thru	Res	Dte	Physician	
01	1144	01	R	05/24/01	R	05/24/01	H	U	IAB				
	LAB									05/24/01	HERZWORN, SANDRA H		
02	1141	KE	R	05/21/01	I	05/21/01	H	U	ERED				
	MED									05/21/01	HOBBS, EIGIN		
03	1138	RE	R	05/18/01	I	05/18/01	H	U	ERED				
	PED									05/18/01	BASH, DENNIS P		
04	1030	KE	R	01/30/01	I	01/31/01	H	U	AW				
	OBV									01/30/01	GETTS, ALAN G		
05	1073	TE	R	01/23/01	I	01/23/01	H	U	ERED				
	MED									01/23/01	ZHAKHIE, CIAU A		

PF7-PWD

PF8-PWD

YAS11MT

User ID: B09379

Terminal: MRRA Function: VISI

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LL360



=====STOP  
 VISIT HISTORY INQUIRY UNIVERSITY HOSPITAL 10/13/03 12:44  
 LAWRENCE, NIGEL KHALIL 000408168

----- VISIT HISTORY SELECTION -----  
 Select Line Number

Visit	Ppt	Ac	Adm/Vis	Type	Dis/Dep	Dis	Pav	Loca	Reference	LN	File	Date
Srv	Umsy	Other	A/C4		Hb	Cls	From	Thru	Reg	Dte	Physician	
01.	1029	EE	W	01/29/01	1	01/29/01	H	U	ERKD			
		PEO							01/29/01	ANNADIE, ZIAD A		
02.	0835	EE	W	11/30/00	1	11/30/00	H	U	ERKD			
		PEO							11/30/00	SHAFNER, MICHAEL R		
03.	0287	YL	K	10/15/00	1	10/17/00	H	U	4W			
		PEO							10/17/00	ANDERSON, MARY H		
04.	0256	EE	K	09/12/00	1	09/12/00	K	U	ERKD			
		PEO							09/12/00	SHAFNER, MICHAEL R		
05.	0147	YL	K	05/27/00	1	05/31/00	K	U	4W			
		PEO							05/26/00	DAVIS, STACY C		

PF2-BWD

PF6-FWD

User Id R09779

Terminal MEXA Function VISI  
 =====BOT

Request for Medical Attention				<input checked="" type="checkbox"/> WSRC <input type="checkbox"/> WSI <input type="checkbox"/> B&W <input type="checkbox"/> Other <input type="checkbox"/> BSRI <input type="checkbox"/> DOE <input type="checkbox"/> BNFL		<input type="checkbox"/> Exempt <input checked="" type="checkbox"/> Nonexempt <input type="checkbox"/> Other	
Employee Name <i>Chris Lawrence</i>				Social Security No. <i>7614</i>		Date <i>8-1-01</i>	
Gen Dept/Section <i>MT 201</i>		Bldg/Area <i>20117 (Annapolis)</i>		Phone <i>8-5938</i>		Supervisor Name/Phone <i>W.E. Thompson</i>	
Reporting for <input type="checkbox"/> Followup On the Job Injury/Illness <input type="checkbox"/> Non-Work Injury <input type="checkbox"/> On the Job Injury/Illness <input checked="" type="checkbox"/> Personal Illness <input type="checkbox"/> Return from Disability							
Date Injury Occurred		Time of Injury		Medical Recommendations			
<input type="checkbox"/> Health Physics Check not Required  <input type="checkbox"/> Checked by Health Physics  <i>24</i>				<input type="checkbox"/> To Regular Work On _____ <input type="checkbox"/> Recheck in Medical On _____ <input type="checkbox"/> No RCA/Alpha Work _____ <input type="checkbox"/> Dismiss   Date _____ <input type="checkbox"/> Excused from Work @ _____ Date _____ <input type="checkbox"/> Referred to Off-Site Physician _____ M.D. <input type="checkbox"/> Discharge Occupational Injury/Illness			
Restrictions <i>No respirator work x 2 days</i>							
1st Day Out <i>8/24/01</i>		Out Time <i>36 hrs</i>		RTW Date <i>9/1/01</i>		Physician Seen <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
MD. RN				<i>-1 Kalden</i>		Name of MD <i>? MD at WH ER</i> Area <i>719-H</i>	

**MEDICAL DISABILITY APPROVED AFTER**  
**24 HOUR TIME BANK WITHDRAWAL**

Selection Criteria:  
Begin Week Ending Date: 01/01/2000  
End Week Ending Date: 12/31/2000  
Person Id: C8844

# Time and Attendance Warehouse

## Weekly Time Record History By Week Ending Date

Query: ADM WH Weekly Time Record History by Week Ending Date

Date: 10/19/00  
Time: 10:00:14  
AM  
7 of 13

Entry Date	Schd	Day	Shift	Hours	Time Class	Activity	TWC	S/C	Shop Order	Entry Comment Text
------------	------	-----	-------	-------	------------	----------	-----	-----	------------	--------------------

Approver: WARREN, RALPH SEABORNE      Record Status: FROZEN      Last Modified SSN: [REDACTED]

05/08/2000	32	MON	D	10.0	REGULAR HOURS	GHCSM0001	JD08			
05/09/2000	32	TUE	D	10.0	REGULAR HOURS	GHCSM0001	JD08			
05/10/2000	32	WED	D	10.0	REGULAR HOURS	GHCSM0001	JD08			
05/11/2000	32	THU	D	10.0	REGULAR HOURS	GHCSM0001	JD08			

Employee Week Ending Subtotal: 40.0

Week Ending DT: 05/21/2000

Approver: USHER, KEVIN JAMES      Record Status: FROZEN      Last Modified SSN: [REDACTED]

05/15/2000	32	MON	D	8.5	TIME OFF WITHOUT PAY					
05/16/2000	32	TUE	D	10.0	REGULAR HOURS	GHCSM0001	JD08			
05/16/2000	11	TUE	D	1.5	MAKEUP TIME	GHCSM0001	JD08			
05/17/2000	32	WED	D	10.0	REGULAR HOURS	GHCSM0001	JD08			
05/18/2000	32	THU	D	10.0	REGULAR HOURS	GHCSM0001	JD08			

Employee Week Ending Subtotal: 40.0

Week Ending DT: 05/28/2000

Approver: USHER, KEVIN JAMES      Record Status: FROZEN      Last Modified SSN: [REDACTED]

05/22/2000	32	MON	D	10.0	REGULAR HOURS	GHCSM0001	JD08			
05/23/2000	32	TUE	D	10.0	REGULAR HOURS	GHCSM0001	JD08			
05/24/2000	32	WED	D	10.0	REGULAR HOURS	GHCSM0001	JD08			
05/25/2000	32	THU	D	10.0	REGULAR HOURS	GHCSM0001	JD08			

Employee Week Ending Subtotal: 40.0

Week Ending DT: 06/04/2000

Approver: WARREN, RALPH SEABORNE      Record Status: FROZEN      Last Modified SSN: [REDACTED]

05/29/2000	32	MON	D	10.0	HOLIDAY OBSERVANCE					
05/30/2000	32	TUE	D	10.0	TIME OFF WITHOUT PAY					
05/31/2000	32	WED	D	10.0	REGULAR HOURS	GHCSM0001	JD08			
06/01/2000	32	THU	D	10.0	REGULAR HOURS	GHCSM0001	JD08			

child care situation. New born had Thrash or white spots inside mouth. Excused

Makeup for Monday

child sick - excused

EXHIBIT

102

PLAINTIFF'S

LL102

VISIT HISTORY INQUIRY  
LAWRENCE, HIGEL KHALIL

UNIVERSITY HOSPITAL

10/13/03 12:44  
000453168

VISIT HISTORY SELECTION

Select Line Number

Visit	Ppt	Ft	Adm	Vis	Type	Dis/Dep	Dis	Pat	Loc	Reference	IK	File	Date
Seq	Desc		Other	A/CW		HH	Cls	From	Thru	Rec	Dte-Physician		
01.	5147	IL	K	05/27/00	1	05/31/00	H	U	4W		I		
	PER									05/15/00 DAVIS, STACY E			
02.	0014	IL	E	01/16/00	1	01/18/00	H	U	4W		I		
	PER									01/14/00 STAFF, PER			
03.	9167	KK	K	07/06/99	1	07/06/99	H	U	ERRR				
	MEB									07/06/99 SHAFENK, MICHAEL R			
04.	8263	KE	K	09/20/98	1	09/21/98	H	U	ERRR				
	PER									09/20/98 BASH, DENNIS P			
05.	7210	KK	K	07/29/97	1	07/29/97	M	U	ERRR				
	MEB									07/29/97 COASTAL, PHYSICIANS S			

PF1-BWD

PF2-EMD

User ID 803979

THIRD HEDS Function VIST

LL362

BEST AVAILABLE COPY









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*****
VISIT HISTORY INQUIRY.          UNIVERSITY HOSPITAL          10/13/07 12:44
LAWRENCE, NIGEL KHALIL          000455160
*****
VISIT HISTORY SELECTION
Select Line Number

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Select Line Number

	Visit	Ppt No	Adm	Is Type	Dis/Dap	Dis	Rev	Locs	Reference	LF	Film Date
	Srv	Pnsg	Other	A/C4	NH	CIS	From Thru	Reg	Dls	Physician	
01.	1265	II	C		09/22/91	I	09/26/91	U	U	4W	09/22/91 BENNETT, JAMES W
					FED						
02.	1118	II	C		04/28/91	I	05/01/91	H	U	4W	04/28/91 BENNETT, JAMES W
					FED						
03.	0126	II	C		05/08/90	I	05/11/90	H	U	4W	05/08/90 BENNETT, JAMES W
					FED						
04.	0041	EE	C		01/21/90	I	01/21/90	U	U	ENHR	SEWARD, PAUL M
					FED						
05.	0140	II	C		08/29/89	I	08/31/89	H	U	4W	BENNETT, JAMES W
					FED						

[illegible]

UNIT	Act	FC	Adm/Vol	Type	Dis/Dep	Dis	Fav	Loc	Reference	IK	Film Data	
Serial	Class		Other	A/C4		Hd	Cls	From	Thru	Reg	Dte	Physician
001	9240	II	C	08/23/89	1	08/31/89	R	U	4W			BENNETT, JAMES W
	FEB											
002	9240	NR		08/26/89		08/29/89	T	U				BENNETT, JAMES W
	FEB											
003	9214	II	C	08/02/89	1	08/05/89	R	U	4W			BENNETT, JAMES W
	FEB											
004	0100	II		04/09/88		04/10/88	R	U				BENNETT, JAMES W
	UBN											
005	9244			END OF DISCLAY	****							

007-5W7  
S11WZ  
Host: LD EC9295      Terminal: MERA      Function: VISA  
\*\*\*\*\*



## STIPULATIONS

**STIPULATIONS**

It is stipulated and agreed that this deposition is being taken pursuant to the Federal Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby not waived.

Signature sheet is attached to the deposition at page 162.

Wednesday, October 22, 2003  
9:37 a.m. - 2:59 a.m.

The deposition of CHRISTOPHER LAWRENCE, taken on behalf of the Defendant at the law offices of Malone & Thompson, LLC, 1527 Blanding Street, Columbia, South Carolina, on the 22nd day of October, 2003 before Karen Yearwood-Cole, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

1 CHRISTOPHER LAWRENCE, being duly sworn, deposes and  
2 testifies as follows:  
3 MR. LAWRENCE - EXAMINATION BY MR. THOMPSON:  
4 Q: We're here to take the deposition of Mr.  
5 Christopher Lawrence in the case of Christopher  
6 Lawrence v. Westinghouse Savannah River Site.  
7 The deposition is being taken pursuant to  
8 notice under Federal Rules of Civil Procedure.  
9 Mr. Lawrence, have you ever given a deposition  
10 before?  
11 A: No, I haven't.  
12 Q: Okay. Well, what's going to be happening this  
13 morning is that I'm going to be asking you a  
14 series of questions about your case, and the  
15 purpose of the deposition is for me to find out  
16 about your case, what it's all about, on the  
17 record. This is ... other than, you know,  
18 written discovery that I sent you ... is my  
19 only opportunity to find out in an official way  
20 what your case is about. It's not, the purpose  
21 of this is not for you to try your case  
22 A: Right  
23 Q: Or convince me about your case. If that  
24 happens, it will be in front of a judge or a  
25 jury later on. So this is just for me to ask

PAGEEXHIBITS

Infant Nurseries

Robert D. Bunker

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of the Nervous

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1 vacation, they would be wrote up subject to a  
 2 contact, and this is one of the, this is when  
 3 I initially challenged them on their position,  
 4 because they couldn't show it to me in the  
 5 policy where we were supposed to receive these  
 6 contacts. And until this day, until they  
 7 changed, they came out with a policy documented  
 8 approved procedure saying it's a percent, maybe  
 9 two or three percent per quarter or something  
 10 like that, which comes out to be about forty  
 11 hours, but prior to that time, they were trying  
 12 to hold us to a standard which was not even yet  
 13 established. And I said there's no way you're  
 14 going to tell me somebody in a different  
 15 department is taking off and they're not being  
 16 punished and you have an attendance policy  
 17 across the board. You're not consistent. If  
 18 you're going to administer something to all  
 19 Westinghouse employees, it has to be  
 20 consistently across the board, bottom line.  
 21 Q: Now, are you trying to say that you could take  
 22 off as much time as you wanted because there  
 23 was no policy?  
 24 A: That is not correct. Because, I remind you  
 25 now, even in my first year, that's the lowest

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1 percent that I had, 88%. But mind you now, I  
 2 still have a sick child and the years after  
 3 that, '90, '92, '93, '97, I mean '93, '94,  
 4 '92, '91, something like that, I'm still in the  
 5 nineties.  
 6 Q: Okay. I'm going to jump ahead a little bit  
 7 since you've mentioned a couple times this  
 8 concern you raised about the forty hour rule.  
 9 And isn't it correct that the ultimate  
 10 conclusion of Westinghouse, and I'll show you  
 11 the document in a moment, was that the forty  
 12 hour standard that was being imposed was  
 13 consistent with the WSRC policies?  
 14 A: That is not correct.  
 15 Q: Okay. Let me show you a document from my  
 16 record prepared by WL Luce.  
 17 A: WL Luce.  
 18 Q: And I'll refer you to my page marked, actually  
 19 two pages, 153 and 154 and it states at the  
 20 bottom of 153, although Mr. Robinson's guidance  
 21 was issued more than a year and a half earlier,  
 22 the forty hour provision in the memorandum was  
 23 essentially identical to the 2% for twelve  
 24 months absentee analysis guideline.  
 25 A: The key word is, it was initiated, it was

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1 initiated earlier, prior to before, and they  
 2 were trying to hold MLI employees to something  
 3 that was not yet approved.  
 4 Q: Okay.  
 5 A: Now, he says that in his letter there.  
 6 Q: I understand you disagree.  
 7 A: Right.  
 8 Q: But he does conclude that that rule was  
 9 consistent with WSRC policy and management  
 10 responsibility; isn't that correct? He did  
 11 conclude that?  
 12 A: Yeah, he concluded it.  
 13 Q: But you disagree with that?  
 14 A: I disagree with that.  
 15 Q: But that was the answer of WSRC to your  
 16 complaint about the forty hour standard,  
 17 correct?  
 18 A: That was their documented answer, which I can  
 19 say it is not, nowhere in policy that you could  
 20 find this.  
 21 Q: Okay.  
 22 A: During those years. And that's the reason why  
 23 the statement says Mr. Luce says it was  
 24 initiated earlier, prior before being approved,  
 25 so how can you hold an employee or an employer

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1 to some standard that is not in the site  
 2 policy. It makes no sense to me. That's not  
 3 consistent.  
 4 Q: Well, it doesn't make sense either for them to  
 5 allow employees take however much time off they  
 6 want, right?  
 7 A: That is correct, and I understand that. A  
 8 company, I owned a company and I had standards,  
 9 but when there are particular instances where  
 10 ... you have to understand also you're looking  
 11 at the attendance, but my work ethic is  
 12 impeccable. It's rated high above a lot of  
 13 people in that area, so if you, if you take  
 14 that in account, if a person is missing so much  
 15 time, how can you have such a good work, get  
 16 excellent ratings in your work performance?  
 17 You can't have a double standard. Either I'm  
 18 not here to do a job or I'm here to do a job or  
 19 when I'm there, I get excellent ratings, so  
 20 that means I have to be there to perform. Is  
 21 that not the case?  
 22 Q: How many employees do you have at your  
 23 business?  
 24 A: I had eight.  
 25 Q: Do you have your business still?



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1 A: No. I sold it.  
 2 Q: Did you ever have to fire any of your  
 3 employees?  
 4 A: I had to talk to them before. I've had to  
 5 reprimand for attendance.  
 6 Q: And what's your expectation on attendance for  
 7 your employees?  
 8 A: If they notify me in advance, I can receive  
 9 that because I'm flexible and I'm human and I  
 10 know I have issues to. So to have, hold  
 11 somebody ... I wasn't concerned with  
 12 production. When somebody called me and said  
 13 hey, my son is sick or my car is broken or I  
 14 have an issue with my mother, I'm open to that  
 15 even though it put me in a situation that I had  
 16 to make somebody else or I had to cover myself,  
 17 but you have to have an understanding that this  
 18 is real life. Everything don't stop on,  
 19 because you need to make your goal, you need to  
 20 make your production. I mean people, I had a  
 21 young family. I had a son. I had a daughter.  
 22 I had another daughter who had medical issues.  
 23 I didn't ask for that. That was put upon me  
 24 and so, Westinghouse and my medical ... the  
 25 information I provided to you, all the times

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1 he's been in and out of the hospital, he just  
 2 got out of the hospital last week, all the  
 3 instances in and out, in and out, four days,  
 4 five days, even with just the fact of me having  
 5 to take him to the hospital in the morning,  
 6 2:00 or 3:00 in the morning and then have to  
 7 come to work, that was taxing. And for someone  
 8 not to understand it ... and when Bill Clinton  
 9 passed that law for family medical disability,  
 10 I thought that was, that would help me because  
 11 most of the time I had used up my vacation time  
 12 taking him back and forth to the hospital, back  
 13 and forth to the hospital in the morning. He  
 14 can't breath, he can't breath. So I never  
 15 really had a chance to enjoy, like most  
 16 employees, a vacation because my vacation was  
 17 spent on my son. So with all that said and  
 18 done, I think a company has to have a standard,  
 19 but I think it should take some things in  
 20 consideration also and not be so production  
 21 orientated. I mean, we had enough coverage.  
 22 Westinghouse always have had enough coverage if  
 23 an employee was out in each department. Every  
 24 department I've worked in that was staffed, we  
 25 had that in place because we knew people were

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1 going to be off, people were going to take  
 2 vacation.  
 3 Q: How much vacation did you have, were you  
 4 entitled to at the end of your employment?  
 5 A: I was entitled ...  
 6 Q: Per year.  
 7 A: I think every, up to ... I think when we get  
 8 five years they give you three weeks, I  
 9 believe. I'm not ... some of this is vague and  
 10 I have to look back, but I know we started out  
 11 with two weeks.  
 12 Q: And you have holidays?  
 13 A: You have holidays, right.  
 14 Q: And then you've got ... what else have you got?  
 15 Personal leave?  
 16 A: Up under the old rule, they didn't have that.  
 17 All they had was your weeks vacation. There  
 18 was no allowance time for sick days. The sick  
 19 days came in when they switched to the forty  
 20 hour standard or the two, three percent  
 21 standard. Only then did they instituted some  
 22 sick days and that came probably here about two  
 23 years where they added in another week instead  
 24 of allowing you sick days because then they  
 25 introduced this time thing, memorandum where

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1 you had a time bank schedule and you used these  
 2 hours that you get into being not paid and then  
 3 they gave you a week, added additional week for  
 4 medical staff. But prior before that time,  
 5 there was nothing established for sick days.  
 6 Q: All right. So when you were terminated, what  
 7 was the policy? How much time did you have off  
 8 in a year?  
 9 A: I had, I think I had four weeks, four weeks.  
 10 Q: And holidays, there was nothing in addition to  
 11 that?  
 12 A: I had four weeks, an additional week was sick  
 13 time.  
 14 Q: So you had up to five weeks?  
 15 A: Up to five weeks, I believe. It might have  
 16 been up to four weeks or up to five weeks, one  
 17 of the two.  
 18 Q: I show you a document that's my eighty-seven  
 19 and ask you if this is a contact that you were  
 20 given in which management expressed concern  
 21 about your attendance? And that would be back  
 22 in January of 1992.  
 23 A: I'm not aware of this because I didn't, there's  
 24 no ... I mean I didn't even, I didn't sign it  
 25 or they didn't put ... normally when they would

6 (Pages 21 to 24)

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1 give these, they would say employee didn't sign  
 2 or make a comment in there, so my memory of  
 3 this, I would have to see ... because usually  
 4 I kept all information given to me and I would  
 5 have to look over for, if I received this.  
 6 Q: So you don't know if you got that or not?  
 7 A: Right. I normally I've gotten something from  
 8 Jackie Banks, but at the same time, I've gotten  
 9 excellent ratings from Jackie Banks in  
 10 performance.  
 11 Q: Right. So Jackie Banks, according to your  
 12 recollection, Jackie Banks did at some point  
 13 express concern to you about attendance?  
 14 A: Right. But my whole issue, if you've got a  
 15 concern with attendance, why give me an  
 16 excellent on my performance, work performance.  
 17 It don't, you can't, it's kind of like you  
 18 can't, how can you give somebody excellent  
 19 rating, good performance, well job, well good  
 20 and you're giving him, and his attendance is  
 21 bad. Even that is something just a standard  
 22 that you have to do just for document purposes,  
 23 because certainly she's, if you pull up my  
 24 performance record, I got excellence from her,  
 25 good excellent ratings.

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1 Q: Would you agree that you can be excellent when  
 2 you're there and yet not be there enough to  
 3 satisfy your employer?  
 4 A: There's no way you can get excellence in these  
 5 type of jobs and not be there. There's no way.  
 6 Q: We'll look at some of your performances. We'll  
 7 touch back on that. Let me show you a document  
 8 which is ninety-seven dated June 26, 1992, and  
 9 ask you if this is a contact you received in  
 10 which management expressed concern about your  
 11 attendance. This is from Kathy Holly.  
 12 A: I don't agree exactly what it says. The  
 13 purpose of this interview is to increase work  
 14 performance, which at this time is good. Chris  
 15 has been assigned to the consolidation team.  
 16 Chris is reminded of the importance of accurate  
 17 paperwork and documentation when updating PCS  
 18 system. His housekeeping and safety work  
 19 ethics are above average and is expected to  
 20 continue. Chris remembers to follow the site  
 21 MLI procedures. Chris has set a goal of forty  
 22 hours. Allow for disability in absenteeism.  
 23 That's it. This is not, it's a qualifying  
 24 content. It's nothing about, it's a qualifying  
 25 condition. It's not informative. It's a

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1 qualifying condition. It gives me more  
 2 qualifying. It says that I'm qualified. It  
 3 supports my qualifications as employee for that  
 4 position.  
 5 Q: I'm going to show you a contact, informative  
 6 contact dated November 6, 1989, from ... you'll  
 7 have to help me out.  
 8 A: Juanita.  
 9 Q: Juanita?  
 10 A: Juanita Johnson.  
 11 Q: Johnson. How do you spell the last name? Do  
 12 you know?  
 13 A: I think it's Juanita Johnson. She might have  
 14 changed it. She's got married since then.  
 15 Q: All right. In this contact, she seems to be  
 16 concerned that you took time off for a funeral.  
 17 She had expected you to come back to work. It  
 18 almost sounds like y'all had a disagreement,  
 19 where she said you would come back in and you  
 20 responded with I may come back in. I'll let  
 21 you explain that contact.  
 22 A: My grandfather passed and I didn't have  
 23 vacation time, but I think the policy during  
 24 that time allowed a day off for a grandparent  
 25 or something like that. And I had told her,

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1 and this was, because Juanita and I had a good  
 2 relationship, a verbal ... I brought the  
 3 newspaper clipping in and let her see this was  
 4 my grandfather. He passed. My family's in  
 5 town. You know, everybody's here, so I needed  
 6 to take off. It was a time of bereavement. So  
 7 she was, they was trying to require me, it  
 8 doesn't make any sense to require me to come to  
 9 work after I go to my grandfather's funeral  
 10 that day. They said well, come to work that  
 11 night. That, that, first of all, that's so far  
 12 fetch. Would you do that if your grandfather  
 13 passed, somebody who helped raise you? That's  
 14 the issue and so, they were, she and I had a  
 15 disagreement on that. And to support what I  
 16 ... I just didn't take off. I went to her,  
 17 showed the newspaper to her. My grandfather  
 18 passed. I'm, you know ...  
 19 Q: Show her that before or after your absence?  
 20 A: Before, because I requested it.  
 21 Q: Okay. Was it correct that she had instructed  
 22 you to come into work later?  
 23 A: No.  
 24 Q: I thought that's what you just said?  
 25 A: I said here it seems she was trying to hold,

7 (Pages 25 to 28)

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1 Westinghouse or either our management, Juanita  
2 was trying to hold me to something that seemed  
3 so ridiculous to make me come to work  
4 after you buried your grandfather, gone to a  
5 funeral. It makes no sense. That's totally,  
6 you're not even being sensitive to nothing when  
7 you do stuff like that, when you operate along  
8 that line.

9 Q: Is that, that's what she wanted you to do?

10 A: Yes.

11 Q: And you, how did that work? You refused to do  
12 that?

13 A: No. I told her that I was taking off the whole  
14 day. She said that she thought I said I was  
15 going to come in, which that's kind, to me  
16 that's kind of odd.

17 Q: Did you tell her I may come in?

18 A: No, I didn't. I told her that I was taking off  
19 the whole day.

20 Q: And ...

21 A: Because the policy ...

22 Q: What I'm trying to get at, Chris ...

23 A: Right.

24 Q: Did y'all have a disagreement that ...

25 A: We had ...

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1 Q: ... where she's saying I want you to come in  
2 and you were saying no, I'm taking off the day?

3 A: No. That wasn't the disagreement to that  
4 effect. It was told to her that I was taking  
5 off.

6 Q: Told to her? You told her?

7 A: Yes. I mentioned it to her, and I also, every  
8 time I talked with her it was by the policy.  
9 We discussed the policy.

10 Q: Well, what was she upset about? I'm not sure  
11 I follow.

12 A: She was saying that I thought you said you was  
13 coming in, and I said no, I mentioned it to you  
14 in front of, I had a couple, somebody there was  
15 in my presence. I said they heard me say that  
16 I was taking off the whole day.

17 Q: Is that the kind of thing you ask for or can  
18 you say I'm going to take the day off for a  
19 funeral?

20 A: You ask for that. You ask for that with the  
21 understanding that most managers or most  
22 companies would be sensitive to that. You ask  
23 for that because it's allowed in our policy for  
24 that.

25 Q: Okay. I'm next going to ask you about a

1 document 116 informative, excuse me, a  
2 corrective contact dated September 16, 1992,  
3 issued by Mr. M. T. Hollingsworth, and it seems  
4 to be expressing a concern about attendance and  
5 the document notes a number of previous  
6 contacts on the issue of attendance and how  
7 much time you've missed. It's a two page  
8 document actually, so it goes to document 117  
9 as well. Let me ask you if this is a contact  
10 that you received from Mr. Hollingsworth.

11 A: Yes, this was given to me on the basis of there  
12 was an incident that happened with a battery  
13 changer.

14 Q: Okay. I'm really just interested in the  
15 attendance part of it. A very significant part  
16 of this has to do with management's  
17 dissatisfaction with your attendance; isn't  
18 that correct?

19 A: Not correct. That is not correct because you  
20 can't just isolate attendance because you have  
21 to also consider my work ethic. You also have  
22 to consider other things involved. Attendance  
23 is, was addressed in this contact. The  
24 overall, he says here ... there's several  
25 things addressed in this contact and so, they

1 just lumped it into one issue.

2 Q: What was the first thing addressed?

3 A: The contact is being given Chris Lawrence for  
4 overall performance, overall performance with a  
5 specific concern in attendance, safe work  
6 practice, and communication.

7 Q: And you don't think this expresses a concern on  
8 the part of management about your attendance?

9 A: No, because I was there. The attendance part  
10 wouldn't have never resulted in a corrective  
11 contact. The safety issue was their concern  
12 that resulted in the issue of the contact on  
13 that level. Remind you now, because I had just  
14 received a contact, an informative on 9/2.

15 Q: Does this contact under the goals they're  
16 asking you to meet or exceed 97% standard; is  
17 that correct?

18 A: Right. On all contacts given to, across the  
19 board, that statement is put in there. You  
20 must meet 97%. But remind you, this is before,  
21 before the rule. The old rule, this  
22 information in this exhibit 116 is entered  
23 before the forty hour rule ever existed.

24 Q: So before the forty hour rule, how much time  
25 did you think you could miss without management

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1 being able to express a concern to you?  
 2 A: I was still in the 90%.  
 3 Q: Okay. So where does your 90% come from? Is  
 4 that in the policy manual?  
 5 A: No. They had no standard. They had, they  
 6 didn't have a standard. I mean any good mill  
 7 ... the reason why I said that, if they would  
 8 hold me to a standard, people in our  
 9 department, in other departments taking off  
 10 right and left, so the consistency says this,  
 11 how can you hold me to going over forty hours  
 12 when you've got somebody in carpentry  
 13 department or some other group is taking off  
 14 more than forty hours. It makes, there's no  
 15 consistent.  
 16 Q: So your feeling was, as long as you were there  
 17 90% of the time that should be acceptable?  
 18 A: No.  
 19 Q: Okay. I misunderstood you. What did you feel  
 20 was the rule or the standard that you should  
 21 adhere to before the forty hour rule?  
 22 A: No different than any other employee who take  
 23 off for medical leave.  
 24 Q: Which was how much? How much leave did you  
 25 think you could take?

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1 A: I, if I took off, it was a legitimate reason,  
 2 was supported by documentation, so within that  
 3 confine, it didn't affect my performance. If  
 4 an employee takes off and he's a lousy  
 5 performer, he's not doing what he's supposed to  
 6 do ... not one single time can they say my  
 7 attendance stopped me from doing or achieving  
 8 what I was supposed to do with my tasks and  
 9 that I performed above that.  
 10 Q: So it's your feeling that as long as your  
 11 performance is good that your attendance  
 12 shouldn't matter?  
 13 A: No, that is not the sentiment. The feeling is,  
 14 you first have to be to work to perform to get  
 15 grades. The feeling is, yes, standard should  
 16 have been established, but by it being a  
 17 government facility, everything was driven by  
 18 procedure. If it wasn't in the procedure, we  
 19 shouldn't have been held to a standard.  
 20 Q: But even if there's not a procedure, I mean  
 21 there is some point, isn't there, at which a  
 22 manager can say this is just too much  
 23 absenteeism?  
 24 A: He could say that, but look, it's to the  
 25 discretion, which that opens the door for this:

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1 You might have a favorite employee you let take  
 2 off. If it's to a manager's discretion, that's  
 3 bad, because you may have buddy-buddy. You may  
 4 go fishing with an employee and allow him to  
 5 have more lax with his time, so you have to  
 6 have an established standard or policy in  
 7 place.  
 8 Q: So it's your testimony it was, before the forty  
 9 hour rules was put into place, there was no  
 10 policy?  
 11 A: That is correct. That is correct. Other than  
 12 what the general rule for vacation and they had  
 13 some policy in place, and I don't remember  
 14 exactly what the policies were during that  
 15 time, but you're talking about ten years ago  
 16 roughly. But I know for sure I challenged it  
 17 and by me challenging it, I knew, I combed that  
 18 procedure back and forth for me to have to  
 19 submit it and argue what they were trying to  
 20 put on MLI employees.  
 21 Q: But at this point, you don't know what the  
 22 policy was?  
 23 A: It wasn't a forty hour rule established.  
 24 Q: But other than that, can you tell me anything  
 25 more about what you thought the policy was?

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1 A: Same thing. You still had the responsibility  
 2 of an employee to report a situation to your  
 3 manager and you had vacation time off, that  
 4 kind of stuff.  
 5 Q: So after you exhaust your vacation, is it your  
 6 testimony as long as you can document and have  
 7 a legitimate excuse for being absent, you can  
 8 be absent?  
 9 A: That's basically what went on. They had to try  
 10 ... you see, where the time frame, where the  
 11 time line goes, Westinghouse probably had so  
 12 many during the '80s, the '70s, '80s, people  
 13 didn't have no criteria established. People  
 14 were taking off for anything, so they had to  
 15 establish something. And like I said, it's  
 16 been fifteen years, so if, I would have to  
 17 review some information that I have from the  
 18 time they had the policy in place, because I  
 19 kept that. I challenged it. I kept it.  
 20 Q: But sitting here right now, you can't tell me,  
 21 if there was a policy, you can't tell me what  
 22 it was?  
 23 A: Other than what the site policy were for  
 24 attendance.  
 25 Q: And my question is, can you tell me right now

9 (Pages 33 to 36)

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1 what that policy was?

2 A: I cannot tell you exact, and I think that's  
3 within reason. That's fifteen years ago.

4 Q: Well, I understand.

5 A: Right.

6 Q: But I would like to have your understanding,  
7 such as it is.

8 A: Right.

9 Q: I think I've already gotten that, but if you've  
10 got anything else you want to add.

11 A: No.

12 Q: Let me show you a contact dated September 22nd,  
13 1993, from Juanita Johnson and ask you if this  
14 is a contact that you received that shows a  
15 concern by management about your absences?

16 A: Yeah. This still, this still, it still talks  
17 about my son. It talks about dependent care  
18 problems. It talks about ... I even brought  
19 in, I think my son during that year had went  
20 over about \$300,000 worth of hospital bills, so  
21 I brought that in. But still along, this was  
22 still subject to employees without an  
23 established policy. See, it states here the  
24 contact is being held to review your attendance  
25 for '93. You have been out forty-four hours.

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1 You do not have a goal of forty hours. That's  
2 four hours over what you would legally  
3 establish. No interim policy can supersede the  
4 site policy. The site policy says they didn't  
5 have a forty hour rule in there for attendance  
6 for consistency.

7 Q: Well ...

8 A: So how can you, how can you hold me accountable  
9 for going over something, forty-four hours of  
10 missed time? That makes no sense to me.

11 Q: But it is correct that your management was  
12 telling you forty hours is the rule, is our  
13 rule?

14 A: Illegally.

15 Q: Okay. And by that illegally, you mean there  
16 was no support ...

17 A: That is correct.

18 Q: ... in the WSRC policy?

19 A: That is correct.

20 Q: Now, that rule, the forty hour rule, just so we  
21 can draw a line, appears to me to have gone  
22 into effect sometime in the middle of 1993?

23 A: Yeah. That's why ... see, Westinghouse had a  
24 practice, like say for instance, when, if an  
25 employee challenged the situation, they would

1 go back and revisit and meet with the General  
2 Assembly, I guess, the people who establish  
3 policies. Say hey, we need to look at this  
4 here. We need to establish something on the  
5 hindsight of it. But before then, if you don't  
6 challenge it, you'll be subject to many other  
7 things that are not in the policy. And like,  
8 when they say call in management, if a person  
9 is going to be off, report it to management,  
10 there is nowhere in the policy that I was  
11 subject to, even on a disability, that said you  
12 had to call in every day, every week. Well  
13 because I challenged them on my probationary  
14 contact, I'm kind of jumping ahead, they go  
15 back and revise the policy a year later and put  
16 in there a clause saying you must notify your  
17 doctor every week while on disability. Prior  
18 before that, when I was on my disability, it  
19 had no reference to that. It had, the  
20 employee's responsibility stated clearly what  
21 you need to do step-by-step. Never nothing  
22 state to notify your doctor, site doctor, every  
23 week. But because I was given a probation  
24 contact, they went back and revised the policy  
25 and added it in there. And the same thing with

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1 the forty hour rule. I challenged it so  
2 heavily religiously, they went back and  
3 revamped the policy to include that because  
4 they wanted consistency across the board for  
5 all departments, not one department having a  
6 forty hour rule, one department having a sixty  
7 hour rule, one department having a hundred hour  
8 rule. If you're going to have an attendance  
9 policy, it has to be administered across the  
10 board.

11 Q: Okay. Let me show you a informative contact  
12 dated November 1, 1993, and I'll just let you  
13 review it and if you can, tell me what this is  
14 about.

15 A: Yeah. They had went and changed something in  
16 my documents, and this was during the time that  
17 I was challenging them in the forty hour rule.  
18 And so, management took a hard nose position  
19 and I took a hard nose position because I felt  
20 and I believed the policy, what we were being  
21 subject to was wrong, and they took acception  
22 (phonetic) to that, and I was being harassed.  
23 I was being made, I was being treated  
24 different, so I threatened to file a lawsuit.

25 Q: Okay. Who was harassing you at this time?

10 (Pages 37 to 40)



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1 A: This was Gerald Jenigan and Mike Hollingsworth.  
2 So they ended up, I took an exam. They ended  
3 up kind of like getting me out of the  
4 department to kind of ease the tension, but  
5 still then they raised the fact that they were  
6 treating me and bothering me on the basis of me  
7 challenging that forty hour rule.

8 Q Okay. Did you accuse management of falsifying  
9 documents?

10 A: Yes, I did and they did falsify my documents.

11 Q: What did they falsify?

12 A: There was a piece of document that the dates  
13 were changed. There was a piece of document  
14 that had been initially, they gave it to me  
15 and I always keep copies. I don't remember  
16 exactly, because it's been a while, but I had  
17 the original copy of our conversation, but when  
18 they presented the copy again, it had a lot of  
19 other things, and I accused them. I said  
20 someone changed this document. Somebody forged  
21 my name. You know, my name, I know how to  
22 write my name. My name wasn't signed on that  
23 document. And they, somebody had documented,  
24 put my name on that, and I challenged them on  
25 it and they didn't like it.

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1 Q: You don't remember what document it was?

2 A: No, I don't. Now, you see here since, they  
3 said since the recent acceptance behavior seems  
4 to be relative to discussion on comments  
5 associated with your written concern entitled  
6 unfair work practices, all this came as a  
7 result of me filing the information with the  
8 EEOC over at the human resource, human, South  
9 Carolina Department of Human Resources,  
10 something like that and then filing it to upper  
11 management. And I sent the letter to Michael  
12 Jordan, the CEO during that time. I sent the  
13 letter to Michael Jordan. I sent the letter to  
14 corporate. I sent the letter to Washington  
15 D.C. I sent the letter to DOE. I had  
16 conversations with DOE corporate about this  
17 situation and I met several times with DOE,  
18 human resource division, and they didn't like  
19 that. That was a sixty page, I think I did  
20 about a thirty page memo to DOE. Might have  
21 been sixty. I'm not for sure.

22 Q: Do you know... Westinghouse is a privately  
23 owned company, right? It's not a division of  
24 the government, Westinghouse.

25 A: Well, now I think there is something to do

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1 with, since Mr. Michael Jordan... during this  
2 time, I know...

3 Q: They're not part, they've never been a part of  
4 the United States Government, correct? They've  
5 never been a department of the government?

6 A: But they are subject to, if you're working as  
7 a contractor for the government, you're subject  
8 to those rules.

9 Q: I understand that.

10 A: Right.

11 Q: But they're not a department or a governmental  
12 entity? They're not, isn't that correct?

13 A: I'm not sure; I'm not sure on that.

14 Q: So you don't know one way or the other? Like  
15 DOE, that's...

16 A: DOE is government.

17 Q: Now, Westinghouse, would you agree, that they  
18 are not government?

19 A: They're not government, but the, like they're,  
20 it's a clear, it's kind of like a decision if  
21 you work for a government contractor, you will  
22 have to adhere to some of the same statutes as  
23 that, as your employee does by establishing  
24 policies, rules, regulations, standards, have  
25 operating permit, same think thing as the

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1 government. Would you agree to that?

2 Q: You're saying you think there's some statute  
3 out there that regulates them?

4 A: Yes, most definitely. It's a government  
5 facility or government contract. You should  
6 have statute, policy, practice, procedures.

7 Q: But again, they're not actually the government?

8 A: No, they're not.

9 Q: Do you know when you started getting annual  
10 performance appraisals? I didn't see any in  
11 your file before 1994.

12 A: They were annually, I think you get them every  
13 six months on the old, under the old system, I  
14 believe. It's gauged to let the employee know,  
15 you know, how he's performed, what is expected.  
16 It's a qualifying. And then they have one at  
17 ...

18 Q: Okay. Well, let me show you and see if this is  
19 what you're talking about. We've already  
20 looked at this once. It's document marked  
21 ninety-seven. Is that what you're referring  
22 to?

23 A: No. This is a qualifying contact.

24 Q: But it does say performance record at the top,  
25 correct?

11 (Pages 41 to 44)

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1 guy, but I'm not real sure.  
 2 Q: But again, according to their instructions, you  
 3 were supposed to be talking, correct, to Ralph  
 4 or the two managers?  
 5 A: According to them, but are their instructions  
 6 in line with policy? The policy said  
 7 management.  
 8 Q: Is it true you had a conversation with Ralph  
 9 Thigpen ...  
 10 A: Yes, I did.  
 11 Q: ... in which you expressed displeasure that he  
 12 was asking questions to your wife about where  
 13 you were?  
 14 A: Yeah. He was, she said that they were calling,  
 15 calling, calling, interrogating. She said I  
 16 don't know where he's at. I don't keep up with  
 17 him. That's not, you know ...  
 18 Q: And did you tell him I don't have to call your  
 19 damn ass?  
 20 A: No. I remember saying. I called him a dumb  
 21 ass. Those are my exact words. I said those  
 22 are my exact words.  
 23 Q: What were your exact words?  
 24 A: I told him I said that's your problem. You  
 25 don't listen. So we kept going on arguing and

1 Q: Did you threaten him?  
 2 A: No, I didn't, never have.  
 3 Q: Did you tell him you would take care of his  
 4 damn ass when you returned?  
 5 A: No, I didn't, never will. I'm an intelligent  
 6 enough operator to know the consequences for  
 7 idol threats when you ... I mean, that's just  
 8 me.  
 9 Q: Now, is it correct that this sort of last  
 10 absence in late August was the ...  
 11 A: Final.  
 12 Q: ... triggering event that caused your  
 13 discharge?  
 14 A: Well, in their documents to me, which were  
 15 signed, it says insubordination, which is a  
 16 vague and general thing. What was I  
 17 insubordinate of? Certainly if you say policy,  
 18 I made notification to management. Certainly  
 19 there was emergency situation, so all the other  
 20 stuff that said he hadn't notified twenty-four  
 21 hours, that doesn't come into play if it's  
 22 emergency situation. None of that was  
 23 considered. Second of all, other employees,  
 24 which I do list, was excessive in time.  
 25 Q: Okay. I'm going to get to that. We'll get to

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1 arguing. I said what are you, are you a dumb  
 2 ass or what?  
 3 Q: Did you also tell him you would deal with him  
 4 when you got back?  
 5 A: No, I didn't.  
 6 Q: Words to that effect?  
 7 A: No.  
 8 Q: What did you say?  
 9 A: I told him that I would deal with the situation  
 10 when I get back.  
 11 Q: Do you feel you were being respectful to  
 12 supervision when you were using language like  
 13 that?  
 14 A: No more disrespectful than management has been  
 15 towards me.  
 16 Q: And were you yelling through that conversation?  
 17 A: Huh?  
 18 Q: Were you yelling during that conversation?  
 19 A: To some degree. He was yelling also. I only  
 20 react to how, I only react to how someone  
 21 approach me. If they approach me in that tone  
 22 ... and prior before then, I was telling Dave  
 23 Olson that Ralph was abusive to his employees  
 24 and it's noted in his file that he is abusive.  
 25 His tone and language is abusive.

1 that. Did Ralph, did y discuss your  
 2 termination with Ralph Moody?  
 3 A: No.  
 4 Q: Robert Moody, excuse me.  
 5 A: He came to the store and brought my belongings  
 6 and I said they didn't process me out right.  
 7 I said I didn't even get a chance to defend  
 8 none of the accusations. I'm not ... and I  
 9 know policy allows that. You're talking about  
 10 somebody who's been there for fifteen years.  
 11 Q: He came to your store?  
 12 A: Yes. He came to my store and brought my  
 13 belongings in a box and sat them on my counter.  
 14 The way how I got my termination form, they  
 15 faxed that to my store. That was a faxed copy  
 16 of my termination notice to my store telling me  
 17 I was terminated. I received no check-out. I  
 18 had just been pulling samples in a highly  
 19 radiated area five days before.  
 20 Q: Did you tell Mr. Moody about your termination?  
 21 A: No, because I didn't know I was terminated.  
 22 Q: Well, he was bringing you your ...  
 23 A: At that time ...  
 24 Q: ... belongings.  
 25 A: At that time, I knew then, because you know,

13 (Pages 129 to 132)